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HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

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WEDNESDAY, JUNE 21, 2006
1:00 P.M.

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, JUNE 21, 2006

1:00 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

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APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

JOHN D. DOVEY, Division Chief
Adult Institutions
Department of Corrections and Rehabilitation

DEAN A. JOHNSTON, Member
California Student Aid Commission

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We have two nominees here today, and a set of nominees that don't have to be here today. We call them the fortunate ones. You'll soon know why. No, we're just kidding.

I want to make a few opening remarks with regard to our first appointee, Mr. Dovey, who is the Division Chief for Adult Institutions, Department of Corrections and Rehabilitation. If you get paid by the word, you're going to be dovey.

We started the Correction hearings a number of weeks ago. And we did that pursuant to the reorganization of the department. And we said at the time, and we will continue to do this, ask the same questions: Has the reorganization improved the department? Is it more efficient? If so, how? Can we measure the improvement in some kind of a nonanecdotal way? How do these changes affect good public safety policy?

A couple of things before we start the hearing. Senator Machado has held a number of hearings in Budget Sub Four on Corrections issues. He asked Jim Tilton, the Acting Director, to present him with a population management plan by September. Senator Machado and I are working together on that. We want to be helpful, but we do expect improvements. We have no doubt at all that Mr. Tilton is not only committed to that but capable of it.

Secondly, we spoke with Mimi Silbert earlier in the week. She's one of the ones that does not have to appear.

She's the head of the Delancey Street Foundation. Delancey Street has become well known for its work with parolees. She is now working with the third generation of gang members in California, three generations. That tells me that we're not doing the job that we need to be doing.

Now, it's easy for me to say that, point that out, but it's a lot harder, obviously, to fix it. But we have really created something that someone has said is life on the installment plan. We are just moving people in and out, and in and out.

And I'm aware from the communities that I represent that the easiest way for people to manage spikes in crime, or whatever we have, is to pop a parolee and send him back. Get him off the street. It becomes the institution's problem once again. That's not a very apt solution.

So, we want to try to break this up. And the people who are taking these jobs, I think we're lucky to have them. But we look to you not only for guidance but for effectiveness.

Having said that, I'm assuming that you're sitting in the front row there.

MR. DOVEY: Good afternoon.

CHAIRMAN PERATA: It is a good afternoon. May we have your name for the record, sir.

MR. DOVEY: Good afternoon, Mr. Chairman.

My name is John Dovey. Members of the Senate Rules Committee, thank you for scheduling my appearance today. I appreciate it.

My career began over 26 years ago with the California Institution for Men. I attended college while working full time at the prison, graduating from the University of La Verne with a Bachelor of Arts degree in 1981.

As manager, my assignments in the field have included captain, associate warden, chief deputy warden, and warden.

In April, 2004, I accepted the call to duty in Sacramento as the Chief Deputy Director of Field Operations. Since last July, as you know, I have served as the Director, Division of Adult Institutions.

I remain as optimistic and as hopeful about the future today as I did in 2004. I believe my experience and management styles are well suited to address the unprecedented challenges and opportunities which are facing the Division of Adult Institutions.

As for unprecedented challenges, I think it's well known that our prisons are very seriously overcrowded, and our population continues to grow with each passing month. While the department has taken on a new name and added "rehabilitation" to our patches, rehabilitative efforts cannot occur if the environment is not safe to do so. Within our rule book, Section 3270 provides us with a reminder that states:

> "The requirement of custodial security and of staff, inmate and public safety must take precedence over all other considerations in the operation

of all programs and activities
within the department."

For these reasons, I have moved swiftly to address the areas of most concern.

Following the reorganization last July, prisons with similar missions were clustered into five mission-based groups: reception centers, female offender programs, high security and transition, Level II general population and camps, and Level III to Level IV general population. Each mission is now supervised by one associate director.

As the former Chief Deputy Director in the previous organization, I can -- with responsibility then for institutions, parole and health care, I can tell you unequivocally the new structure has strengthened both oversight and support for the institutions and has provided me the ability to focus on institution security operations.

One of my first priorities in the new organization was to establish a regular cycle of facility security audits, something the department abandoned several years ago. After the missions were staffed, a schedule was completed earlier this year, and the formal security audits have begun in April. The goal will be to audit security protocols at one institution every month.

I have also been successful in obtaining technical assistance, which is similar to a grant, from the National Institute of Corrections, the NIC, which will allow practitioners from California to be trained by the NIC and to participate in security audits in other states at no cost to our

taxpayers. In return, just last week the NIC sent a team of security experts in from around the country and conducted security audits at three California prisons.

The inmate population today, the count stands at just over 171,000 and is rising. We have been addressing bed management on several fronts. First, I have personally provided my expectations to the wardens that they manage their prisons efficiently and to focus their attention on maximizing bed utilization and classification reviews. In a system this large, a few beds under-utilized at 33 prisons can cause serious problems for the entire system.

I have been very engaged in reviewing weekly administrative segregation populations and single cell bed open utilization to ensure appropriate decisions are being made, and the prisons are being managed within their budget. I have directed staff from the missions to conduct on-site bed utilization reviews to ensure these instructions are being followed.

Aggressive bed management will not be enough, however, to resolve the serious overcrowding we are experiencing. In the summer of 2005, we initiated a departmental task force known as Right Prison, Right Mission. It was the first work group to do a comprehensive analysis ever of the institutions' mission and the populations in them. The analysis has provided a road map for future decision making.

The analysis, instead of housing offenders who will require focused services at all prisons, the plan called for revamping the mission within the institutions to manage the

population more effectively and place offenders where there is a stronger likelihood that we can actually provide the services. In short, the plan will enable the department to make more strategic decisions to meet current and future needs, rather than base the decisions on the status quo.

The Right Prison, Right Mission work group did not, however, identify both base and overcrowding space and infrastructure needs in the prisons. For the last several months, staff have been engaged in developing a comprehensive bed plan that includes immediate, intermediate, and long range strategies to address the population as next steps. Utilizing existing construction space standards and updated construction cost models, the plan will address -- the plan will address space infrastructure deficiencies and institution overcrowding space requirements for expanded medical, mental health, and dental care program space for offender rehabilitative programs.

In addition to population pressures, the single greatest threat to the safety of staff and inmates is criminal activity conducted by gang members. Gang activity in California prisons is a barrier that prevents active participation in program activities by offenders who would benefit from such programs but instead are intimidated by the influence of gang members and the potential for violence.

To address that threat, I have implemented a pilot program at High Desert State Prison known as the Behavior Management Unit, or BMU. BMU is not just another form of administrative segregation, but it is a program where inmates

must earn their privileges based on their conduct and by participating in a program which includes an educational component.

The program has been operating since November of last year, and thus far, the evidence suggests that the program is working. Those inmates who have completed the program have not reoffended. As a pilot program, we anticipate upwards of 10 percent of our population could be included in this Behavior Management Unit.

While I envision the BMU to be very successful, it will not be sufficient to address every aspect of gang violence. I have looked at strategies in other states and have developed an action plan and a timeline that will move us from what I call a label-based system to a behavior-based system. I have secured tentative funding approval in the Governor's budget that will allow me to bring in the best minds in the nation to help us develop strategies designed to reduce gang violence and increase safety.

In order to achieve our objectives, our employees need a safe work environment, and the offenders need a safe rehabilitative environment. I have already directed staff to prepare a new lesson plan for custody staff dealing specifically with gang activity. The lesson plan has been completed, and training will start in July.

When I came to Sacramento, I made a commitment not to forget our female offenders. As the former warden of the California Institution for Women, I've had the benefit to see first-hand why many of the approaches we've taken in the past

for managing male offenders have not worked for managing female offenders. A Gender Responsive Strategies Commission was established in February, 2005, as an advisory committee to assess and make recommendations on proposed strategies. These gender-responsive strategies emphasize the implementation of the evidence-based policies, programs, and procedures that foster personal growth, accountability, self-reliance, education, life skills, work skills, and the maintenance of healthy family and community relationships.

Developing and implementing programs and revising existing procedures to support family reunification will continue to be a priority. While much has been done, there is still much to accomplish, and I believe I've lived up to the commitment I made for not forgetting the women when I came to Sacramento.

As the department continues to move forward with improvements in the delivery of health care, I work closely with and in support of Dr. Szekenryi, our Director of Correctional Health Care Division. I believe my role is to identify and remove anything that represents a barrier to the delivery of health care services to the inmate population. I recently facilitated a meeting with officials at the Department of Health Services, where Dr. Szekenryi and I were successful in persuading DHS to allow those offenders who met eligibility requirements for Medi-Cal benefits prior to their release from prison. This is a significant accomplishment, in that the department had been forced to retain inmates beyond their lawful release date because they required a licensed care placement,

and we could not qualify them for benefits until after they were released.

Upon the appointment of Mr. Robert Sillen, I invited him to attend the wardens meeting last month in order to facilitate discussion and provide the receiver with an opportunity to share his expectations with the wardens. Having been a warden myself, I know first-hand the importance of establishing and maintaining a good working relationship with our colleagues in the health care field.

I truly understand why failure is not an option in the delivery of health care services. In a system so large, it is only because of the professionalism, hard work, and dedication of over 29,000 employees who have committed themselves to the work that I have been successful. The accomplishments made by our line staff on a daily basis are to be commended, especially when viewed against the pressures of overcrowding, high vacancies, and the threat of violence. With retirements and ongoing attrition, the department has projected correctional officer vacancies will increase to about 4,000 this fiscal year.

In response, I have been successful in adding an additional correctional officer academy that will increase the pipeline of cadets graduating from 1920 a year to about 3700 each year. Additional cadets are completing their academy training through innovative efforts, such as an academy underway in Susanville to fill vacancies with the local residents at that prison, as well as a pilot program that began in three community colleges.

I recognize you have my application, my resume, other briefing materials. I'm honored to appear before you today. I look forward to your support.

Thank you.

CHAIRMAN PERATA: Thank you.

One major area that I don't believe you touched on, unless I missed it. The reorganization, as I understand it, put education and vocational training in a division that's not adult custody; is that correct?

MR. DOVEY: That's correct.

CHAIRMAN PERATA: Talk to us a little bit about that. I always look for accountability, and if you've got two separate, here and there, and we're trying to talk about rehab, how does that work, or how do you envision it working?

MR. DOVEY: We've already begun a process of regular performance reviews with the institutions. Now that we're in missions, that's one of the advantages of the reorganization, that we're able to compare like prisons with one another so that you're not comparing a women's prison with a high security SHU unit. So, that just makes sense.

But every Thursday, we've given our Thursdays to something called COMPSTAT. It's a performance review modeled after the LAPD, and the system that Chief Braden had set up in Los Angeles, similar to the one they set up in New York.

So, we're able to look at, on a very real-time basis with the secretary and the other chief deputy secretaries, and all the right people in the room who are responsible for delivery of programs, and we're able to now measure how many

offenders are in which programs, how many are not in programs. And so, we're going to be able to give, you know, a real-time snapshot of what's going on with our offender programs very quickly.

CHAIRMAN PERATA: Are there performance benchmarks, or achievement benchmarks for each of the inmates who are in a program?

MR. DOVEY: At this point in time the goal, of course, would be to provide a program, a viable program for every inmate in the system. I mean, that should be the expectation.

CHAIRMAN PERATA: Right.

MR. DOVEY: We have huge barriers that we're tackling. For instance, inmates in our high security prisons, only about 25 percent of them are enrolled in education programs. So, there's a lot yet that we need to do there.

But with the COMPSTAT process, we're able to cut through so much bureaucracy and red tape in one meeting that it becomes clear that, where resources are needed, secretary's enabled to make decisions on a real-time basis. And if they have the resources, then it becomes a performance expectation.

So, I really think we're on the right track. We've only completed one cycle of all of the field operations, and we've revised our data reporting collection tool, if you will.

And I'm -- the wardens are excited. They didn't want to do this at first. I think they were reticent. But I think they see it's a huge advantage. As long as you're

performing, it's not a problem. If you needed resources, this is the time to let that be known.

CHAIRMAN PERATA: Questions of the Members?

SENATOR ASHBURN: I do.

You've been selected for what I view as an awesome responsibility as the Director over the Adult Institutions. Yes, there's a secretary above you, but you're the person who's going to be, day-to-day, carrying out the responsibilities of these institutions. And you're going to rely on some people for leadership who are in leadership position, wardens and others.

And I'd like to have you address the issue of the quality of individuals that are selected to be wardens within the system. And what is the quality? What are the needs for the future?

MR. DOVEY: Be happy to, thank you.

Having been a warden, I mean, I have the luxury of having been there, done that.

It takes an incredible person to want to step up and be the mayor of a city, is what it is. And you have to really manage not just the inside but the outside, too. And it takes someone who's got the ability to work as long as it takes. It takes somebody who has the wisdom to be able to raise their hand and ask questions. It takes somebody who's educated.

And with the vetting process now, which was also a beginning part of the reorg, wardens no longer go through confirmation process, but the process that they have to go through with the Office of Inspector General is pretty awesome.

In fact, it's the same process that they use for judges, and it's very intensive. It's very personal. The Inspector General's Office does a very thorough job of checking the backgrounds, and I believe the OIG's main focus is character, really wanting to make sure that we have persons of good character before he submits their names to the Governor's Office for approval.

So, I think that is one advantage of the reorg, although several of the wardens have indicated that it's pretty invasive, once you complete it, you really know you've been through something.

SENATOR ASHBURN: So, the expectation would be that the quality of the wardens will improve, and what would be your role in monitoring, overseeing, judging their performance?

MR. DOVEY: I take an active role in what wardens do. And now, with -- with my focus just on the missions and on the prisons, I meet regularly with the wardens. I review their stats every week. I've had the unpleasant task of having to remove wardens. I'd rather be life giving than life taking, I truly would, but sometimes that's part of the job.

I would believe that leadership, managing all parts of the institution, even those parts that maybe you're not familiar with, we are, though, a little short on the bench with candidates for wardens. And we're reaching down into the organization in ways that we've not done before. So, that's going to require more mentoring, and we've reached out with California State University at Sacramento to develop a mentoring program just for that leadership, because we really believe that

we want to tailor the future generation of wardens now.

SENATOR ASHBURN: In October you wrote:

"An imminent and substantial threat to public safety exists requiring immediate action."

What prompted that to be written by you?

MR. DOVEY: It was a memorandum that I wrote to the Agency Secretary at the time. I had been working diligently with Commander Mark Klugman, Los Angeles County, helping them manage their jail population. At the time, the L.A. County system was -- was very over crowded. They were over their court-ordered cap, and the jail was facing the situation of either sending us more inmates or having to release other inmates to the streets of Los Angeles. That was the imminent public threat to safety that I spoke of in my October memorandum.

SENATOR ASHBURN: So, the memorandum was internal?

MR. DOVEY: It was an internal memorandum from me to the Agency Secretary.

SENATOR ASHBURN: And what was the response from the Agency Secretary?

MR. DOVEY: In a nutshell, I had asked that we move quickly, swiftly and businesslike to activate reception center beds at the prison in Lancaster, which we did.

SENATOR ASHBURN: Was there any subsequent communication from you that documents that your concerns had been dealt with?

MR. DOVEY: Activating the reception -- changing that mission was really what had been requested.

We have since, though, followed up with numerous action items. Some of them are stand-alones; some of them were in meetings.

We followed up with looking at how we processed inmates in the reception centers. I asked staff, for example, just so you can get a sense, the processes that we use today, do we need to do the same old processes that we've always done? Why do you need to fill out this form? If you didn't have to fill out that particular form, could you move that case faster without compromising what we're doing?

So, we have quite a few different reception center projects going on to help expedite, move inmates faster, things that we have not done before.

We activated the BMU up at High Desert State Prison. We have switched some of the yards from general population to sensitive needs because more inmates seem to have sensitive needs requirements now.

We have worked with Health Care Services Division to move inmates in the mental health system more swiftly through the system.

So, it's an ongoing effort everyday.

SENATOR ASHBURN: You described the circumstance that would cause you to put into writing your belief that an imminent threat to public safety existed.

What would you have done differently in response if you were in the position that you are being confirmed for

today, you're being considered for today?

MR. DOVEY: Knowing -- knowing what this would have done to the City of Los Angeles, I would have done the same.

SENATOR ASHBURN: So there's nothing you would have done different from that which occurred within the reaction of the administration?

MR. DOVEY: I was trying to keep my boss informed of what was going on and why we had to move fast. That's it.

SENATOR ASHBURN: How close to an imminent public safety threat are we today? I mean, if we were at that stage in October a year ago, what would your assessment be today?

MR. DOVEY: Well, today we're not -- at least the department's not talking about releasing inmates early. Other jail systems have not contacted me and asked, "Hey, I need to put more inmates in your prisons or we're going to have to release inmates."

So, from that perspective, it's -- I don't think it's the same.

Are we over crowded? Is our population higher today than it's ever been? Absolutely. Are those conditions something that I'd like to change? Would I like to see the staff not have to work in that work environment? Would I like to have offenders in rehab programs rather than having bunks in areas where we used to program? Absolutely.

SENATOR ASHBURN: What I'm trying to get at is sort of your frame of mind about the role that you had and the role that you are being nominated for.

You were in essentially the same job at the time that you wrote this.

MR. DOVEY: Correct.

SENATOR ASHBURN: Because you were responsible for institutions, but you also had health care and one other area.

MR. DOVEY: Parole.

SENATOR ASHBURN: Parole. I don't think anybody would argue that was a rather overwhelming responsibility to be vested in one individual.

So now the line of authority is clearer, simplified, if you will, with respect to your role over institutions. Do you feel empowered, liberated, motivated with respect to your sense of responsibility to do the job under this structure, with this responsibility, with this agency director than you did at the time that you wrote this in October?

MR. DOVEY: I've had to go into my boss's office throughout my career and tell them things they didn't want to hear. And I'm never intimidated to do that. Good news, bad news, it doesn't matter. I feel very open to do everything I have to do.

SENATOR ASHBURN: So, there is no reluctance on your part --

MR. DOVEY: None.

SENATOR ASHBURN: -- to face down the Agency Secretary, to face down the Governor, to face down a legislative committee chair to do what you feel is necessary to make sure that the institutions are administered properly and that we move

beyond some of the problems of the past?

MR. DOVEY: Absolutely.

SENATOR ASHBURN: Thanks.

CHAIRMAN PERATA: Anyone else? Senator Cedillo?

SENATOR CEDILLO: I'll defer to Senator Battin.

CHAIRMAN PERATA: Senator Battin.

SENATOR BATTIN: Tell me about the Bridging Program. Explain what it is, what your opinions are of it, and if you have plans of reforming it, and what you plan to do with it.

MR. DOVEY: The Bridging Program was implemented before I got to Sacramento. I was still a warden, I believe.

The Bridging Program provides work incentive credits to inmates who come into the reception center. It provides work incentive credits for inmates who used to be on waiting lists in the general population but couldn't get a job, or were waiting to get a job. So in a sense, we're giving work incentive credits away the minute the offender walks in the door.

It was implemented as a cost savings measure in the previous administration.

To be honest with you, I haven't seen -- I don't think it's a program that's evidence-based. I don't think it's a program that -- that will enable the offenders to get something meaningful out of it. I think it needs some work, to be honest with you. It's my personal opinion.

SENATOR BATTIN: You are in a position to change that; aren't you?

MR. DOVEY: I'm over Adult Institutions. I have a counterpart that works in the education department. And I am not privy to every program that they have planned, but I think there have been discussions about the Bridging.

I'd be happy to bring that back to you.

SENATOR BATTIN: Right now if an inmate gases an officer, it's my understanding they lose 30 days of their good-time credit that they have built up?

MR. DOVEY: And there's other sanctions as well.

SENATOR BATTIN: Then 150 days goes by, and if they haven't done it again, they get the 30 days back?

MR. DOVEY: That's correct.

SENATOR BATTIN: So, you gas an officer, 151 days go by; you gas an officer again, you only lose 30 days; right? Instead of 60, it just keeps renewing.

MR. DOVEY: And I agree that that doesn't make sense.

SENATOR BATTIN: It makes less sense. It's an actual incentive to cause harm to the officers.

MR. DOVEY: It's part of the strategy that we're rolling out on changing the whole way we deal with gangs.

We've in the past done a pretty good job of identifying and validating the four major prison gang members, but the rest of the institutions, we've not done a very good job of attacking, you know, incentives and disincentives for exactly those kinds of things.

One of the issues that we discovered with the Behavior Modification Unit is some of those very same kind of

guys that would be involved in that kind of conduct, you put them in the Behavior Modification Unit, and now they have to earn those privileges. And whereas they're maybe not afraid of the disciplinary sanctions, they very much don't like losing their privileges.

And so, with that aspect, we need to completely relook at our entire disciplinary schedule.

SENATOR BATTIN: Is that something you're going to do?

MR. DOVEY: That's part of the implementation of gang strategy. It's part of our roll-out plan for the next twelve months.

When I said earlier that I had been successful in getting some money in the Governor's budget to pull in some experts, we need to look at everything from privileges, disciplinary credit loss schedules, creating carrots for those inmates who want to program, creating disincentives for those who want to gas our staff.

I absolutely agree with that.

SENATOR BATTIN: Okay. I would appreciate it if you would just keep me informed --

MR. DOVEY: I'd be more than happy to.

SENATOR BATTIN: -- of what you're doing there.

I think it's unconscionable that we basically don't punish someone for assaulting an officer. Effectively, if they can just wait 150 days, their punishment goes away.

MR. DOVEY: My sense is, many of our offenders, most of them, are not afraid of the disciplinary system. We

have to attack that.

SENATOR BATTIN: Let's move on to another issue. A month ago or two months ago, I visited Pelican Bay, which is a challenge in and of itself just to deal with the worst element of society that we have.

One of the things that I was told up there was that -- and I'm not entirely clear on who did this, so you can enlighten me as well -- is that what happened was, some inmates ended up with possession with the personal and confidential information of the officers because they were told to go over there and pick up those boxes and shred them. And in fact, they went over there and picked up that information and kept it. Then they started, you know, getting it out into the community.

And that's a big problem. As a matter of fact, there is a statute that prohibits inmates being around confidential information of the officers.

I wanted to know what was going on. We wrote a letter about it. I effectively was gaffed off by saying, well, there's an investigation and we'll just let you know whenever we decide to.

What's going on?

More importantly, tell me why this will never happen again at any institution.

MR. DOVEY: The incident is, as you know, under investigation. But quite frankly, what we already know, this is public record, is confidential information was able to get in the hands of offenders who then used it to make unauthorized charges on our employees' credit. And that's unconscionable

that that would occur.

While I am following the investigation closely to make sure that it's completed in a timely fashion, I've talked to the warden in that institution, and there'll be people held accountable for their actions.

The prison has already taken remedial action by implementing new procedures that requires custody staff to be present and not use those inmates.

SENATOR BATTIN: We looked into this, and it is the law today that, but for incidental contact, the inmates cannot be near confidential information of the officers.

Telling those inmates to go get those boxes and move them over there is not incidental contact. It's intimate contact.

What I guess I want from you is the knowledge that the investigation at Pelican Bay is going to be thorough, and how did it happen in the first place?

MR. DOVEY: I wish I could tell you I was there, and I could tell you the genesis of that, and how it occurred.

I'd be happy to meet with you on a regular basis or when the investigation is completed to make sure you understand what we've done to fully address and correct the problem.

We are also using this incident as reminder to all prisons so that other people can benefit from this from this -- from this bad incident.

SENATOR BATTIN: Although I might very well, and I understand this is a tough position for you to be in, I

probably have a completely different opinion as to what the prison system should be doing than some of my colleagues on the left side of the spectrum. So we, for different reasons and completely opposite reasons, are frustrated.

So, of course, it puts you in the middle, and there's nothing you can do to satisfy both of us because satisfying one makes the other problem bigger. So, I get that, and I preface this.

I was very dissatisfied with Mr. Hickman's performance as the head of Corrections. I don't believe that he was up to the job and told him so to his face on a couple of occasions.

You were part of the Hickman regime, and I want to know how you're going to distinguish yourself from that?

I'm not even going to ask you if you agree with my premise. I just want to know what you're going to do different.

MR. DOVEY: I can probably talk a long time about the occasions I agreed with Mr. Hickman both privately and publicly.

I'm not a Yes man. Like I said, I have no problem coming in and telling my boss when I believe they're about to make the worse mistake of their career.

I'm my own person. I have always managed within my own -- my own style. I've looked at people throughout my career, tried to take the good from those that I thought were good, and not take the bad from the other people.

I believe I have my own style. I'm not anybody's

Yes person, if that's the issue. And I come to work everyday because I want to.

I come up here because I believe that there's a chance to change the course we're on. I don't mind telling anybody about that.

SENATOR BATTIN: Thank you.

CHAIRMAN PERATA: Senator Cedillo.

SENATOR CEDILLO: We received a letter with some pretty scathing critiques from Senator Romero. I assume you have a copy of it.

You had mentioned about the Right Prison, Right Mission. So, tell me about the mission of this little phrase there.

MR. DOVEY: The Right Prison, Right Mission, you want to just know a little bit more about that?

SENATOR CEDILLO: About the mission aspect; that's correct.

MR. DOVEY: Right Prison, Right Mission started out as a review of each -- the mission of every prison. And some prisons have inmates who require health care needs, and we were housing them in prisons where we couldn't recruit a competent physician. Some inmates required sensitive needs yards, and they were in a nice, gleaming prison where we had other inmates who were housed in old prisons who were hard to manage.

When you look at CIM as an old prison, you look at the physical plant, the decay there and how hard those staff work, and then look at the prison at Wasco or North Kern, where

they're newer institutions doing the same job, and you can see although the work is still challenging, it's nothing like it is at CIM.

So, we looked at changing missions, and just challenging ourselves on our old assumptions, and trying to put the right prison mission into each location.

So, we had kind of a decision making tool from here on out on what would be best. We used that model, by the way, in October, when we had to go into LAC for -- to help out the L.A. County Sheriff's Department.

SENATOR CEDILLO: You spoke about this would give you a road map for future decisions in the immediate decisions, intermediate decisions, and in the long term.

My question is, how? What's the plan that emerges from that?

MR. DOVEY: The actual plan to address the population pressures, some of the plans include strategies that we've not done before. Strategies like, we have started in Tulare County more of a reentry center concept. It's a strategy that other states have used throughout the country.

Joan Petersilia has accused the department for not managing its parolee population well. By the time they get in, it's time for them to go out, and so you have this -- this population that just keeps churning.

So, rather than that, one of the strategies that really seems to show promise is where parolees would go into a community-based facility, and you would work on the issues that -- that brought them in on a technical violation, whether

it be addiction, alcoholism, gang issues. And working there in the community, it would better prepare them to reenter so that they were less likely to reoffend, which increases public safety. It also doesn't put them back into the prison system as a whole, and it helps, you know, your capacity that way. That's one of the strategies.

Other strategies would obviously include increasing our capacity, whether that would be building additional housing units within the existing prisons, and a whole litany of other ideas.

SENATOR CEDILLO: You spoke about population safety, and you spoke about the gang presence in the prison.

My question is, to what extent in developing your strategies for the gang presence in the prisons have you integrated your collective bargaining units? Do you have a labor-management work committees on these particular issues?

MR. DOVEY: We have just developed -- the budget change proposal was completed. We, I believe, are going to be successful this year with the budget, and we had planned to include a broad spectrum of people, not just bargaining units, but certainly that's part of it, community members. At some point I'd like to bring in ex-gang members, experts from throughout the country, to really get a coalition of support for changing the way we're doing business now, because what we're doing, quite frankly, isn't working.

SENATOR CEDILLO: So currently you don't include the collective bargaining units in this?

MR. DOVEY: I guess what I would say --

SENATOR CEDILLO: But you anticipate doing so?

MR. DOVEY: We're not -- we're not quite that far.

SENATOR CEDILLO: You had talked about again population safety within the prison. You talked about a lesson plan for the staff. You're also not that far with respect to input from the collective bargaining units.

MR. DOVEY: In terms of the overall strategy, I mean, we have not really done a good job of training staff on the importance of recognizing gang activity and documenting it, but that's only one piece.

I think, getting back to Senator Battin's question about the disciplinary system and looking at creating incentives and disincentives, I think there's a lot we can do. I've look at systems in other states, and I just believe that we have to make our work environment safer for the staff.

And so quite naturally that would include participation with the bargaining units.

SENATOR CEDILLO: How?

MR. DOVEY: Well, to be honest with you, some of the best ideas I've ever had came from staff that worked for me.

SENATOR CEDILLO: I understand that, but I didn't hear you say that in your initial presentation. I'm just wondering how you're going to get this input; how you plan to integrate the line staff.

I'm concerned that you're trying to manage what you call a very dangerous situation, but those who are the most intimate with respect to that, in the greatest peril aren't

integrated in you designing your strategies and your plans.

MR. DOVEY: And I must give credit where credit is due. The design of the gang training was not done by people in Headquarters but by field staff, people working in the prisons.

SENATOR CEDILLO: I appreciate that. It still is not responsive with respect to your development of strategies and plans.

MR. DOVEY: I plan to include all stakeholders as we move forward, including the bargaining units. It's my commitment.

SENATOR CEDILLO: Tell me how that plays out.

MR. DOVEY: What I would foresee is, like we've done on other committees, that the bargaining unit would have, or the bargaining units, depending upon what we're doing, would have a member of their organization working with us. It's easier to do it that way than it would be to say, "Here's the proposal. What do you think?"

SENATOR CEDILLO: Correct. I don't disagree with you.

I'm trying to hear how this actually happens.

Tell me about inmate to staff ratio, and what are the strategies for it? What's your plan, what's your benchmarks?

What I want to hear from you, and we have others that will follow, is where you see yourself and the institution in five years? What's your strategy? What's your plan, and what are benchmarks that will say to yourself and to us that you

can take tremendous pride in the success that you've accomplished because you've hit your benchmarks?

Particularly in this inmate to staff ratio, Senator Romero talks about people now sleeping in the yards. She's been very critical of you. Yesterday in Chino, you began housing inmates in the prison yard. Their rooms have been converted to expand bed capacity. Obviously, staff to inmate ratio is a big concern.

My question is, what's the strategy, what's the plan, and what are the benchmarks to address specifically that?

MR. DOVEY: On the incident at Chino, it's not okay to house inmates outside on the yard like that, number one, just so you know.

My bigger concern was, it's difficult to help address those situations unless they're reported timely. It's hard to shine a light on something like that unless somebody raises their hand, and I've already addressed why that wasn't done with the appropriate parties.

As we go through our COMPSTAT process, and I think it's something that if you were not familiar with, it would be good to see, you're going to see that we're tracking staff assaults; we're tracking workers comp claims; we're tracking inmate incidents. And I think very quickly we'll be able to say what our successes are and where we need to shed resources, or adjust resources, or ask for more resources.

I think this will be a very transparent, very clear way of managing our prisons. And the data will be readily

available.

SENATOR CEDILLO: Talk to me about your strategies. You talked about an academy that will have 3700 graduates, and you have 4,000 vacancies. What's your attrition rate, and how do those relate? Are you leaving annually? How many vacancies do you have?

MR. DOVEY: The regular academy was not going to be sufficient to meet our needs. Just clearly it was not.

With the attrition somewhere between a thousand or two a year, clearly that was -- the existing academy might not even meet existing needs.

So, we had to really figure out a way to double our pipeline. So we were successful last October-November in adding another academy using the vacant prison at Stockton, NCWF.

And the training department has really done a pretty good job of getting that up and running, and getting more cadets out of there.

Anecdotally, I was at Salinas Valley in November, and I walked around the prison, and I could ask staff, "How many overtimes are you working?" And in November, they were working a lot of ordered overtimes.

I was there earlier this spring, same question, and no one's working ordered overtimes. There's still plenty of overtime to go around, but the difference is, the second class is having a big impact.

The academy at Susanville was really something that we hadn't done before, where at that local prisons --

there's two up there -- they're running a small academy up there with applicants from that local community. And the beautiful part about that is, they want to work at that prison which sometimes can be hard to recruit because it's -- it's in a remote area of the state. But these are people that are qualified, competent, want to work there, so they're going to make an investment. So that's a great way to help them.

There's a pilot program with community colleges. It's like a year in process, so it'll be a while before we see any results from that.

SENATOR CEDILLO: So, you have 4,000 vacancies. What's your comfort level in the number of vacancies that you find acceptable, and when do you envision getting there?

MR. DOVEY: I think altogether the vacancy issue will take a couple of years to resolve. It's going to take us a couple of years with attrition, retirements. It's not going to happen overnight.

But I think the department has made great moves, great strides on addressing the vacancy issue.

SENATOR CEDILLO: My question was, when and what's the acceptable vacancy rate that works for your organization?

MR. DOVEY: Well, some of the institutions operate at 10-15 percent. Some are at 7 percent. That's pretty high. I think average state service is about 5 percent.

Vacant positions in prisons to the degree we're experiencing now is not good. It's a strain on everyone. People can't go home on time, or can't go home because they've

got to fill another position. It's -- some of our prisons, the staff were working overtime so much that they were working Monday through Thursday, double shifts, and by the time Friday came around, they were so tired they called in sick.

It creates family problems because of the stress of the person being away from home all the time. So, it's a very serious problem, and we're working as fast as we can to fix it.

SENATOR CEDILLO: What's the target date?

MR. DOVEY: I can get back to you with the exact date. I believe it was going to take us about two-and-a-half years, something like that, to get completely caught up.

SENATOR CEDILLO: Talk to me about the collective bargaining process going on right now. What's your goal? Where are you, and what's the timetable for completion?

MR. DOVEY: Can you be a little bit more specific? I don't usually manage collective bargaining, but -- I'm not sure if I understand what you're asking me.

SENATOR CEDILLO: I'm asking you, you're running the Adult Division. You have a need for workforce stability. Part of workforce stability, the premise is that you've got signed collective bargaining agreements.

So my question is, there's goals that you have as an institution. What are those goals? And then, what's the timetable that you have envisioned for the completion of that? And where are you in that process?

MR. DOVEY: My personal goals are for everybody to go home at night when it's time to go.

I don't think that's responsive to your question.

My personal goals for this division would be to improve staff safety, to improve our strategies with gangs, to develop processes where we can communicate better, because sometimes the communication is not good. Strategies which include more training for our staff.

I guess when you tie that to asking a question about labor, I'm not real -- I'm not understanding what you meant.

SENATOR CEDILLO: So you're doing all these things. Those are your goals; right? Workplace safety.

So it seems that that might impact the terms and conditions of employment. That seems like that might be a subject matter that would be subject to your negotiations. It seems to me that there's some goals there, some changes in that, and you laid out three or four goals. They're admirable; they're appropriate.

My question is, how are you going to accomplish that? What parts do you have to negotiate of those, if they're changes in the terms and conditions of employment? And what are your other goals?

MR. DOVEY: Any procedure, any process that we change is going to impact the conditions of employment, then we're required to -- to notice the union, to meet and confer. That's just -- that's the existing process that we are required to follow. We would do that with any of these.

So, I would welcome the union's participation.

When we started to develop a concept for in-cell integration, I called the union and said, "Go to Texas. Go see what we saw." So, I tried to reach out early before we have, you know, a full blown procedure. So I will continue to do that.

SENATOR CEDILLO: What's your timetable for completion of the collective bargaining process?

MR. DOVEY: I would have to check with our -- our labor folks. I'm happy to get back to you.

I would like to have that done as soon as possible, obviously, but I would have to check with our labor.

SENATOR CEDILLO: A follow-up question on Senator Battin's question. You talked about this Bridging Program. Prisoners are not afraid of discipline, and we have to attack that.

How?

MR. DOVEY: I think we have to look at the regs. We have to look at property. We have to look at conduct.

I think for too long we have focused on what the offender looks like rather than what they're actually doing. And so, if we look at our approach from soup to nuts, I think we're going to be able to come up with some different kinds of strategies, because so far -- for example, the strategy in the Behavior Management Unit is working. Those guys have not reoffended. And so, that tells me that that's a great strategy.

But I'm not sure that that's going to be sufficient, so I want to make sure that we're doing everything possible we can do.

SENATOR CEDILLO: Thank you.

CHAIRMAN PERATA: It's sort of a follow-up, maybe not.

There was an opposition letter from CCPOA, and you might assume that that's just sort of par for the course. But I am concerned.

I've heard more than once over the years about retaliatory action by management against officers, either officers who act in an official capacity as part of a labor organization or otherwise.

Those of us who work in this building have pretty clear rules and regulations and severe sanctions for mistreating employees.

And yet, I get the impression that over the years in the correctional system, it's kind of like the rules of engagement in combat. And you may operate -- not you -- but those who are professionally engaged in Corrections might be a little bit different than those of us who work in these hallways, although I would put our guerrilla warfare skills up against yours any time.

But it's really important to me, because once you pass out of here, I can't get my hands around you again. It's really important to understand, for me to understand, or maybe just say. One is, we don't improve our recruitment prospects when that word gets out there.

And second, as far as I'm concerned as a civilian, some of the best information and perhaps the best test, or the best barometer of the conditions of our prisons are had not through management, but through people who are really

doing the work, no disrespect intended.

So, that's an important thing. We've gone through reorg now. We know that this system is at a crisis point. And I don't think there's any Democratic or Republican way of approaching this. There is just a right way.

A lot of what you've said here today are really just -- they're very much well-honed platitudes now in the business. I've always wondered, is it because you only have -- you seem to be your own man. You comport yourself that way, except you say thing that sound like it's just the company line.

I don't want anybody going into this business or in this new phase of Corrections who doesn't have the courage of convictions to tell the person above you, whether it's Tilton or the administration, this administration or any other administration, that "This is screwed up. Overcrowding conditions mean the following. These are the things that I would suggest as a professional we do, or I can't do my damn job."

I also think it makes sense to have some engagement on a professional level with the workforce of the prison system, and it ought not to take two-and-a-half years. Hell, I see a couple of CCPOA guys right there now. They have probably enough opinions for most of us. But God damn it, they can go chapter and verse with you on almost any single issue.

"Them and us" mentality has got to stop. And I think it was indicated before by Senator Battin that your predecessor had a little bit too much of that. And it was

weird, because somebody that comes up through the system is always finding it weird.

But this is not going anywhere other than I'm just getting more and more frustrated, and I don't have as close a look at this as someone like Mike Machado does, who's spent a lot of time on this.

But I'm certainly reflecting the attitude that a lot of us have in my caucus, and I think it's an attitude that a lot of us have just generally, particularly this side, since we have the responsibility of confirmation.

So, there's got to be -- the hell to pay will fall to us all. I heard this morning in Florida there was a shoot out in a correctional situation, and you'll be first ones to go. Maybe not you, but certainly a couple of people sitting here or their brethren.

What I'm interested in is how this thing gets solved with fewer "them and us." I guess if there has to be a "them and us," it should be you versus the inmates, not you versus line workers and this other kind of crap.

MR. DOVEY: I could not agree with you more.

CHAIRMAN PERATA: Good. I want to see you do something about it.

SENATOR ASHBURN: Let me say to you with great sincerity that I think your interview here has gone downhill. The more you talk, the less I'm convinced that perhaps you have the skills that are necessary. Let me give you some specific examples.

Senator Battin asked you about the personnel

records at Pelican Bay. And the regret that you expressed was that credit card charges may have been made by inmates on the staff's personal finances.

No expression of concern for the safety of the families or of those correctional officers because their personal confidential information had been breached. That is very alarming to me. I did not hear in any way an expression of concern for the safety of the officers, but instead you expressed a concern of credit card charges.

In answer to Senator Cedillo, in talking about the involvement of the staff, and he expressed it in a different way, those members of a collective bargaining unit, but we're talking about the involvement of the line staff in open dialogue and communication, you seemed completely lost about that concept, that they would be systematically, routinely, regularly, thoughtfully involved in the issues that develop on a day-to-day management.

That doesn't mean abrogating management's responsibility. It means that these are the people who are in contact with the inmates daily, and they know better in many instances what's taking place in that institution than the leadership. And yet, you seemed completely insensitive to the involvement.

In response to the issue about a lack of a collective bargaining agreement, you seemed to be completely lost that that in any way affects the way in which you do your job.

You don't do your job except by having

personnel. And the way that you get personnel in California is through a collective bargaining agreement. You ought to know every detail. You are not the negotiator. I'm not suggesting it.

But in every instance the involvement of the details of a collective bargaining agreement are going to affect your ability to do your job, to administer the institutions. And yet you are totally lost.

I don't get it. It's been suggested that this position may be beyond your capacity. I mean, that's not an expression that you're not a good person, with sincere intent, with good qualities, background and experience.

But I'm not prepared to vote at this time, based on what we've heard here.

CHAIRMAN PERATA: Senator Bowen.

SENATOR BOWEN: Thank you.

Given the depth of the discussion, and the thickness of the briefing materials, and the history, I'm not going to spend a lot of time on questions.

I have one specific question I want to talk to you about with regard to women in prison.

And then, it struck me in listening to this, first, that I wish I were more expert in all that's going on. There's been a lot.

You have been in the position of having different people to report to over a very short period of time. And I think we all need to recognize that the situation of those who are below the middle levels in the department is not one that

any of us would likely choose to enter into without, probably, about a significant salary increase. So, I think it's important to acknowledge that.

But it struck that me that probably one of the greatest challenges that the department and you face is not so much in the specifics, but in deciding what to take on first as a matter of priorities.

So, my general question to you is this. I break down what's going on here as being comprehended -- I can't deal with 50 pages of comments without thinking, well, how do you approach this?

First is public safety. I think all of us referenced that. The primary responsibility that you have in the department is public safety.

Second is, and these two are both related but they're different, how do you deal with the safety, and specifically, of the correctional officers?

And third, how do you deal with the safety of the inmates and the future safety of all Californians in terms of what happens while inmates are going to be released?

So, in those categories -- public safety generally, correctional officers, and I'll come back to it if you want, and inmates -- I'd like to know what you think the top three to-dos items are. And then, whether or not you believe you have the resources and the authority to do the things that need to be done in those three areas.

I, in looking at this, was hard-pressed to know where I would start, were I in your shoes. And obviously, each

of us has probably has a slightly different view.

But ultimately you and the Secretary, and a few others, are going to have to decide what to do first, and what things, while they need to be done, don't get done first. That's the big question.

Then I have a much smaller one after that, and then I'm finished.

MR. DOVEY: Those are pretty good questions.

The issue of public safety, staff safety, offender safety, the issue of staff vacancies, I don't think you can take those linearly. They have to be done all at once.

And unfortunately [sic] with the organization now, we have a whole division that's focused on recruiting staff, getting them through the pipeline, doing things differently, putting backgrounds out for contracts, doing things to really cut down the time it takes to get our cadets through that background, into the academy and out into the institutions.

So, that's occurring, as well as a real focus on the security in the institutions.

As -- as -- we had talked last year about the reorganization. I continued to remind the wardens to, quote, "Keep their eye on the ball to make sure that security is number one," and bringing back those security audits as a way to improve the skills of the staff and the institutions, to really focus on public safety, to make sure that the prisons are operating in a safe and secure manner, to make sure that employees are safe.

That has been going on. We have focused a lot of

attention on Security 101, basic security protocols. That's what has to be adhered to.

So, I think it's not you're going to do one, then the other. These things have to be done all at once.

SENATOR BOWEN: I don't know how you take the 50 pages of material, and all the charts and graphs, and do everything all at once.

Each of us when we go to begin the work day, we pick the four phone calls we absolutely know we need to make, and we look at the deadlines for when a bill has to leave committee, and we decide, all right, today I'm going to get this done.

And then four things happen that we didn't expect. And the Pro Tem calls and throws a monkey wrench in the whole works. And we adjust as we go along.

But we know that we can't be in more than one meeting at once. Well, maybe we can now with a Blackberry, but perhaps that's not for the better.

So, how do you, with all these various things that are underway, and the fact of the federal court intervention, which pieces of this do you start with?

And maybe it's where are there key things that really, other things that are important can't be done unless you accomplish certain things.

As I listened, and I heard something about Texas, it struck me that until you get a computer system in place that automates some of these things, I don't know how you are ever going to be successful at dealing with inmate health care,

figuring out how to handle staff assignments. Just the manual processing of all of that.

And it's not new. This is an issue that's been around since 1995, when I first started getting involved in state computer issues.

How do you set those priorities? Or, do they get set further up, and your job is to implement, not to decide what the priorities are?

MR. DOVEY: My job is to raise my hand when I need resources, and make sure that the other part of the organization knows that.

The parts of the organization involved in training, and recruiting, and doing the backgrounds, we meet regularly to make sure that, you know, we're on track. So, it's not like I have to manage that daily, but we stay very much in tune with that.

The security issues and managing the institutions' security, that's very much part of my job. So, between the associate directors, and the director and myself, we really stay in tune with what's going on, what incidents are happening, what's going on in the institutions. That really is an ongoing part.

SENATOR BOWEN: How does that turn into something you need to do?

I mean, I know every Wednesday I have Rules, but that's read the binder, or answer phone calls. There are specific items that I have to do in order to accomplish the policy objectives.

So, what I'm asking you is, what's on your to-do list? What are the top three things that are on your to-do list? The high level items, not, you know, deal with a particular incident, a particular yard, because that's a symptom of the bigger issues, I think.

MR. DOVEY: I think I mentioned some of those in my opening.

High level would be working on reducing violence in the institution, getting the gang strategy implemented, looking at the incentives and disincentives, like I said. That's a high level.

SENATOR BOWEN: Those are problems.

I'm asking you for what you want to do about those. You're identifying the issues.

I'm asking you to tell me what you think the actions are that are the top things.

It's a little different question.

MR. DOVEY: In terms of goals, to implement in-cell integration would be a goal that we're going to be doing.

For the work on Right Prison, Right Mission, to make sure that we can put the right mission in the right prison to improve staff safety. Those are very strategic kinds of goals.

Reducing inmate violence. Continuing to staff up the prisons. Those are very high level, important goals that, you know, we're very much interested in.

SENATOR BOWEN: Do you think there's a difference

when you look at what needs to be done, when you look from a general public safety lens, to when you shift and say, from the standpoint of a correctional officer, what are the top three things that I need to do?

Or, from the standpoint of inmates, where I look at it, and they certainly overlap, but I look at the fact that when you place people in a reception area or in a general area as a housing area, you lose your ability to do programs that are what we hope will prepare people who are released from showing back up in that same intake area again.

MR. DOVEY: There is a pecking order. You can't do rehab in prisons if it's not safe to do so.

SENATOR BOWEN: That's what I'm asking you, how do you set those?

MR. DOVEY: So, some of that goes by mission, lower levels. It may be a little easier to do so that in a lower level prison than a higher level.

So, you don't stop. You keep looking for opportunities where it is safe to do so.

I'm not sure if I'm answering your question, to be honest with you.

SENATOR BOWEN: I was thinking about this as we were having this conversation. Maybe it comes from years of having the experience, running as a candidate, where if I gave those kinds of answers to the reporter for the Chronicle or the Mercury, I'd get killed. They'd say to me, "That's nice. We know we need to improve education. What specifically do you wants to do, and in what priority order do you wish to do it?

Is reducing classroom size at the top of the list? Is increasing teacher pay at the top of the list? Is high school exit exam at the top of the list? Is alternative schools for those kids who would drop out because they're just not engaged in the system, is that at the top of the list?"

You can't do them all at once. You have to pick which things you're going to actually do.

MR. DOVEY: And while there are others in the organization who would focus on education or those kinds of --

SENATOR BOWEN: I'm just using that as an example of the kind of --

MR. DOVEY: I want to focus on having the best trained, most secure prisons that we can possibly have.

And the staff need to be comfortable with their role, know why they're doing what they're doing, understand the importance of it, and do it well everyday.

SENATOR BOWEN: When you say, "Here's how I'm going to do that," what's that list look like?

Staff needs to be comfortable. They need to know what to do, and they need to know how they fit in.

What do you do to accomplish that?

MR. DOVEY: That's a difficult task right now with our vacancies, because with the number that we're having, it's difficult to have a lot of consistency in some of our prisons. I mean, so it just magnifies the problem.

But getting back to basics, like I said, really focusing on security protocols, post orders, doing the kind of security checks, doing things that are supposed to be done

everyday, making sure that we're doing appropriate searches. All those kinds of security things in the institution that have to be done, and they have to be done well.

That's for my area, for the Division of Adult Institutions, that is the number one issue that we focus on, is security.

SENATOR BOWEN: What's the number two issue that you focus on?

MR. DOVEY: Number two would be, for me, making sure that we have the pipeline of staff coming in to fill the vacancies. That's very important.

Number three, you have to have good programs. But again, you have to have space to have the programs. So, working with Right Prison, Right Mission, working with our plan for the future, to make sure that we have appropriate space for health care, for mental health, for rehabilitative programs in the institutions. All those are very important.

So, in our plan we're developing, we've had to make sure that we address those. There's a lot of work and a lot of attention being given to the complexity of having the right space as well for all those programs.

It's no good to have prison where everybody's locked down all the time, and no one ever has the opportunity to do anything.

SENATOR BOWEN: You talked a little bit about this at the beginning, but it's the one specific area I want to follow-up on, and it is the difference between men and women in the Correctional system, because it's fairly recent, I think,

that as an institution, that we've started to realize that how the system works or doesn't really is very different.

And historically, the prison system was set up on a male-based model, unlike any other aspect of society, of course, which wasn't set up that way.

But I would like to just hear a little bit from you about what's happening to make the prison system, the Corrections system, work better for not only women who are there, but for what's going to happen again when they're released.

I think probably, on a percentage basis, you get more women as a percentage who have release dates than men.

So what changes are underway? What do you think is important that we should know about there?

MR. DOVEY: You're right. We historically have not looked at gender-responsive programs for women. It was one size fits all.

In looking around the country, one of things we quickly discovered was that we were one of the last two states in the nation to still allow men to search -- to do clothed body searches on women. So, we stopped that.

We now have the women's prisons all in one mission, so that we're able to have similar issues come up, and we're able to look at them separately with a focus.

We've identified a gender-responsive task force that's led by our associate director, and includes stakeholders from Legislature, stakeholders from the community, from within the institutions. And they're developing gender-specific

procedures that we've already implemented.

It's really a different focus. Women come into prison with a different history than men do, typically. Typically a lot of abuse, drug addiction, very little violence. And so, you have to use the evidence that you have when you develop protocols to address security, to address programs.

And so, like I said, we've done quite a bit. There's a lot yet to do.

SENATOR BOWEN: Specifically, I understand the task force has done some good work. I also understand that there are personal property rules that are about to be changed, that women have different personal property needs than men.

Any of us who've ever lived with a guy can -- you know, I'm going to get into all kinds of trouble here for that, so let me not go down that road.

What's happening there? Are you going to be the ultimate decision maker with regard to the personal property rules? And what should we expect and when?

MR. DOVEY: We should expect personal property regulations to mirror the mission. I expect that women will be much different than men. I expect that within the men, guys getting ready to go home, lower security offenders will be much different than the guy just coming into the system.

So, I really think for the first time we're going to have very mission-oriented procedures that make sense. Again, we got to tie it to the carrot and the stick, so that for the men especially, which is different, that we can use some of that to help control behavior.

SENATOR BOWEN: So specifically with regard to women and the personal property rules, incarcerated women and the personal property rules, what do you see specifically, and when would you expect to have that work completed?

MR. DOVEY: I expect the first draft to be due mid-July.

SENATOR BOWEN: Can you talk about what we're likely to see that's different from what happens now with regard to women and personal property?

MR. DOVEY: I think there will be some changes that are different than the men. I know there'll be.

I haven't seen the complete draft yet. I've talked to the associate director over that mission, and she's very passionate about the work that she's engaged in. So, I'm confident we'll have a good product.

SENATOR BOWEN: But there's not anything specific at this point that you can talk about?

MR. DOVEY: I'd be happy to get back to you later.

SENATOR BOWEN: Okay. All right. Thank you.

I just want to highlight that issue. I think the Women's Caucus has been very engaged in it.

MR. DOVEY: Absolutely.

SENATOR BOWEN: So, it's been something that we'll continue to follow.

CHAIRMAN PERATA: We've had a request by Senator Battin to continue this matter for a week.

I think in deference to that request, I'm going

to put it over now, with the idea that probably what is being discussed today should be reviewed next week, and people who want to talk about it, make some comments about it, we should have that opportunity rather than putting it over as a vote-only. So, I'm going to do that.

I'm want to point out a couple of things. In the flow chart, you're fourth in line. So it means that as you look above you, there are others.

And I think there's a certain amount you can do as head of Adult Corrections, but we have reorganized, for better or for worse, the department. We have a huge number of vacancies. We've got a tremendous problem with overcrowding.

The overcrowding issue we have asked, as I mentioned, Secretary Tilton to return by September with a population management plan. I don't know what plan we have for vacancies.

I have not had any opportunity to talk to Mr. Tilton at all about a better interrelationship and working relationships with the labor organizations that represent the men and women that work in the institutions.

But I do know where the buck stops and where it doesn't. And I don't want to spend too much more time talking about issues that you have no control over.

And we are, as I said, pretty heavily engaged in this subject matter. So what I'd like to do is -- and I'm sure you're probably going to Hawaii or something next week -- put this matter over next week.

It will be a continuation of the hearing, so

those who are here in support or opposition will have an opportunity at that time. In effect it won't be a de novo hearing; it'll just be a continuation.

But I believe a lot of the information that has been requested, you can have a little bit more time to think about that.

I also frankly think the administration has some concern and responsibility for putting this in the proper context. They're not interested in hanging you out there, either.

So with that, we will continue it.

I want to also point out, and this is not apropos of Mr. Dovey, but we have a number of appointees who are not required to appear. They are all qualified, and they've answered the questions in writing that we've asked of them.

But this body was reorganized last July, almost a year ago, and had so many vacant positions that it didn't meet as a board until March, which was a couple months ago. Out of the 14 appointed positions, there are still 6 vacant. One of them is a county supervisor slot. This state is filthy with county supervisors, or flush. We have a couple former of those guys right here.

So, I just want to urge. We can appoint all the people in the world but, one, they have to show up.

Corrections Standards, I'm sorry.

We can have all these public committees as we want, and we can make all the appointments we want, but if people don't show up, or if they don't have enough for a quorum,

it's a waste of time and we ought to get rid of the committees, or get rid of the people who are failing to provide the necessary appointments.

So, Mr. Dovey, I wish you well in the interim. We'll see you next week on Wednesday.

We're going to take a break so that your fingers don't fall off. Ten minutes.

[Thereupon a brief recess was taken.]

CHAIRMAN PERATA: The Rules Committee will reconvene.

We're going to ask now that Mr. Johnston, Member of the California Student Aid Commission, come forward.

We got most of the witnesses out of the room, so you can say what you want.

[Laughter.]

CHAIRMAN PERATA: Welcome.

MR. JOHNSTON: Thank you.

CHAIRMAN PERATA: You're not going to read all those pieces --

MR. JOHNSTON: No, I'm going to keep my remarks very brief, Senator.

Senator Perata and Members of the Committee, it's a pleasure for me to be here today.

My name is Dean Johnston. I appear before you today to ask for your confirmation vote on my continued service to the California Student Aid Commission.

I bring over 30 years of experience in higher

education management to the Commission. I will not bore you with those details, unless you want them.

I'm currently President of Santa Barbara Business College. I have not been there 118 years, but the school has a 118-year history, serving 1200 students in four locations in the California communities, Bakersfield being one.

I have served on the Commission for one year. During that time, the Commission has experienced several challenges, to say the least. The Legislative Analyst's Office and the Bureau of State Audits have both completed their reports and presented related findings to the Commission and your body.

Last Friday, the Commission delivered to BSA our first progress report on those findings, and I shared those findings with your staffs, and you should have those.

In my opinion, the BSA report was on target in its findings and recommendations. Many of the findings and related recommendations can be addressed by clearly defining roles and responsibilities between the Commission and EdFUND. The Commission is currently addressing these challenging tasks.

If confirmed, I pledge to you my continued efforts to try to resolve these issues. I look forward to answering any of your questions, and thank you for opportunity to appear.

CHAIRMAN PERATA: Thank you.

So, you agree with the report. Is there some kind of a systematic recovery plan that the Commission has?

MR. JOHNSTON: Yes. We are engaged at this point

in time. In my opinion, we haven't been as engaged as we probably should have, but there's other commissioners that would probably disagree with that.

We had the message from your body that we shouldn't do anything with roles and responsibilities until these reports were completed, and we didn't.

So, we are addressing them, and I think the audit -- there's 18 findings in the audit report. And we're addressing each one of those findings, many of which, probably seven or eight, we've all ready fixed.

The biggest one is the roles and responsibilities. There's been a continued problem between these two agencies for number of years.

The issue, as I see it, revolves around some would say a lack of clear definitions on the roles and responsibilities from your legislation.

I happen to believe that's probably a good thing, and that's why you appoint people like myself, that are supposed to have the guidance and understanding of how to actually operate these programs.

I think the Commission has failed to act on defining the roles and responsibilities. The BSA audit is going to force us to do that, and it should be done, I think, by Christmas.

CHAIRMAN PERATA: You work full-time; right?

MR. JOHNSTON: This is -- I would like to think that.

Part of the problem, Senator, is that we all have

full-time jobs and fairly responsible positions.

And when I accepted this position, I had no idea of the -- of the hours this would take.

On top of that, we have been -- the appointment process has not been as efficient since the year I've been on. We have 14 sitting commissioners, of which we've only had 8 sitting at the any one point in time. So, those of us that have been on the Commission, dealing with all these audits, there's been a lot of time and energy. And I have no problem with that.

CHAIRMAN PERATA: Is that because there are vacancies?

MR. JOHNSTON: Yes. There have been five vacancies. Now I think we have two vacancies. Last month we just completed our last appointment.

The problem though, these individuals are appointed to this Commission. Many of them really don't have a good understanding of financial aid. They have a lot of management expertise, so it takes them a few meetings to get up to speed. So, that just kind of slows the process down.

We are, I think, staffed now from a standpoint of commissioners, that we should be able to execute on the -- on our problems.

CHAIRMAN PERATA: Any Members?

SENATOR ASHBURN: No questions.

SENATOR BATTIN: I think that Senator Cedillo did have questions.

CHAIRMAN PERATA: He did, and he's presenting a bill.

MR. JOHNSTON: I did, Senator, spend an hour-and-a-half with the Senator on Monday and his staff. And we had a great dialogue, and his questions were focused on the BSA issues. Hopefully, I've answered them.

CHAIRMAN PERATA: We might be able to prevent you from spending another hour-and-a-half.

[Laughter.]

SENATOR BATTIN: Can we notify him that he's here?

CHAIRMAN PERATA: The spirit of fairness is just washing over us today.

MR. JOHNSTON: I will share with you that the delivery of aid with these issues that we need to address has really not affected the customers, the students. We've done an excellent job. Our staffs have done an excellent job at CSAC and EdFUND in delivering the aid.

EdFUND has been an incredible success story, over $1.5 billion worth of loans. We're the second largest guarantee agency in the country, of which the last few years has thrown off about $300 million that we've used for grant programs. It's a good program.

CHAIRMAN PERATA: Bear with us for a second.

MR. JOHNSTON: No problem.

CHAIRMAN PERATA: We don't want you to talk yourself into trouble.

Any family here?

MR. JOHNSTON: No.

CHAIRMAN PERATA: We'll take a motion. We can at

least do that.

SENATOR BATTIN: I'll certainly be happy to move.

CHAIRMAN PERATA: That took two seconds.

Any support or opposition? There we go.

We have a motion to approve. We have no one here to speak in support or opposition.

Please call the roll.

SENATOR BOWEN: I actually have --

CHAIRMAN PERATA: You had a question?

SENATOR BOWEN: Since Senator Cedillo has been the lead on this, I was going to defer to his questions.

But when I read through this, it's fairly concerning to read that there's been an eight-year struggle for the Commission and EdFUND to develop and implement a viable business diversification plan, and that one still has yet to be developed, after eight years.

So, I'd like to know the status of the business diversification efforts at this point, and in particular what's going on with the $70 million that the Legislature authorized in 2005 to begin the process of diversification?

MR. JOHNSTON: Excellent question.

Part of our challenge with the business diversification of the loan programs predicates itself on federal legislation, and that's a moving target, and it has been.

The federal legislation just changed. So, their incentives through what's called a voluntary flexible agreement --

SENATOR BOWEN: It sounds like a federal term.

MR. JOHNSTON: It's a very complicated Department of Education of incenting the guarantee agencies to focus on areas that they think are appropriate.

In the past they focused on defaulted loans, and they've incented the Aid Commission to aggressively attack defaulted loans. And we have. And it's been very successful. And quite frankly, part of that $300 million that we have in surplus is as a result of those efforts.

That has changed. The default doesn't appear to be the focus of the Department of Ed. We have been in negotiation with the Department of Ed, as other guarantee agencies have in the country, and they have yet to formalize or give us the new voluntary flexible agreement focus.

When we get that, and when we get that direction, I think we'll then be able to start addressing the business diversification program, knowing what our future's going to be. It's based on federal legislation.

Saying that, I will tell you, being a state agency, it does restrict us. Our competitors are not state agencies. They're 501(C)(3)s and don't have the same kind of restrictions we have.

And I realize that we changed -- we set EdFUND up as a 501(C)(3), but the Commission still has responsibility for it. So, we don't have quite the flexibility our competitors have, but I can tell you in all sincerity, we've been very, very successful in our customer satisfaction and our stopping market share decretion by our competitors.

So, do we need to get a plan together? Absolutely.

But I think we need to wait, Senator, until it's clear on what the feds are going to focus on with regard to the new voluntary flexible agreement.

We have been told we should have it soon, but we don't have it yet.

I don't know if that answers your question.

SENATOR BOWEN: So what's going to be different in the next eight years compared to the past eight years on this issue?

MR. JOHNSTON: I think --

SENATOR BOWEN: And I understand you weren't there for much of it.

MR. JOHNSTON: Yes, but your question's appropriate.

The Department of Education in Washington reauthorizes the higher education bill every six years. I believe it's every six years. And they have continued it now for the last two.

So the answer to that is, really nothing's changed other than getting the new federal regs to us so we know what to focus on as far as what we can do to diversify, and where those incentive areas are going to be coming from from the feds.

Does that make sense? No?

SENATOR BOWEN: It's difficult.

You made a reference to the success of the program, but I understand it's running a deficit. Is that incorrect?

MR. JOHNSTON: The loan program is running a deficit?

SENATOR BOWEN: That was my understanding.

MR. JOHNSTON: No. The loan program -- we've had a cash flow issue. Is that what you're concerned about? And we asked for $58 million, I think, a couple months ago, but that relates to the $300 million that was used for the grant programs that, it's my opinion, that we're probably -- it's going to be difficult for EdFUND, under the new structure that the feds are going to dictate to us, to throw off that kind of money to use for the grant programs going forward.

SENATOR BOWEN: What do you mean, "to throw off that kind of money?"

MR. JOHNSTON: Well, in the last -- in the last number of years, the loan programs were able to have a surplus revenue of about $300 million. And that money was used, was taken from EdFUND and used for general funds for the grant program.

That's the reason for our temporary cash flow problem until the fall starts come back in, and that's when a majority of the loans occur. That's when our cash starts to rejuvenate itself from the loans that we guarantee. And that's why the cash flow problem this summer.

If the funds would not have been taken from us and used for grants, we would have been just fine.

SENATOR BOWEN: So, do you think that the funds, surplus funds, should not be used for grants?

How do we keep from repeating this cycle where you wind up with a cash flow problem at a certain time every year?

MR. JOHNSTON: The decision on how you use the money is not the Commission's decision. That program is a state program, and you make those choices.

My suggestion would be that you look at the financial statements, and the cash in the bank, and projections before you allocate those funds for programs not related to the loan program. And I think that's just maybe better communications with this body with regard to that issue.

I would hope that we have excess money, and I would hope that you could use those for the grant program. That's a good thing.

To the extent of how much is a decision that you have to talk with our controllers and our accounting people and make that choice.

SENATOR BOWEN: Can you talk a little bit about the Community College Transfer Entitlements Program, and what happened with the Cal Grants that apparently were awarded to students who didn't meet California residency requirements?

MR. JOHNSTON: A few years ago, you made the Cal Grants program an entitlement program. Heretofore it was not an entitlement program. When you did that, we didn't -- we have not had until recently the technical expertise to convert that system to a more electronic system. Right now it's a BAT

system, and it uses the Teale Data Center. It is very nonuser friendly.

And those kinds of labor intensive processes that we have to deal with on the grant side have been problematic, and I think will continue to be problematic until we fix it.

We currently are looking at moving some of the technical IT processing through the EdFUND computers, because EdFUND does not use the Teale system. We think by doing that, we can modernize -- modernize the program.

There's also a feeling that maybe these grant programs should be decentralized. The federal government has a huge PEL Grant program. That program has been for a number of years decentralized to the schools, where the schools decide who gets what, when. And then the federal government then audits the institutions to ensure that they're complying with the regulations.

We are not in that mode right now.

SENATOR BOWEN: I don't understand the connection between the Teale Data Center, the IT issues, and the problem in awarding Cal Grants to students who didn't meet the California requirements?

MR. JOHNSTON: Well, it's my opinion, Senator, if we had a more sophisticated process, a more electronic process, those kinds of errors would not happen.

It was a basic oversight, no question about it. There was a lot of changes being made to that system. It wasn't in my opinion as electronic as it should be.

SENATOR BOWEN: How does making it electronic

solve --

MR. JOHNSTON: There would have been edits for that electronically. Right now the edits were, in the current system, manual.

SENATOR BOWEN: What do you mean "edits"?

MR. JOHNSTON: Edits mean that the computer would find those mistakes rather than a manual batch process, where it takes human resources to go through and find those mistakes.

If we would have had a more sophisticated system of doing it --

SENATOR BOWEN: I just don't understand how a computer can determine California residency?

MR. JOHNSTON: It's a question, are you a resident or not? And if you're not, there's a check on it. And the computer checks to see if the check's on it. Otherwise, you've got to go through and do it manually. Simple as that.

SENATOR BOWEN: All right. I would presume that somebody just shouldn't have entered the data. If the question wasn't checked "yes", the information should never have gone into the system in the first place.

MR. JOHNSTON: I don't think the question was asked, Senator. I don't even think we asked the question.

SENATOR BOWEN: Once the Student Aid Commission discovered that problem, what happened?

MR. JOHNSTON: We came to you and asked for money to fix it, which is a bad thing. It was a mistake. It shouldn't have happened, in my opinion. If we'd had better systems in place, it wouldn't have happened.

Hopefully, we're moving to that, but it was a mistake, and we're asking you to reimburse the students for that faux pas. Shame on us.

SENATOR BOWEN: The Commission at this point is requesting documentation for future cycles?

MR. JOHNSTON: Absolutely.

SENATOR BOWEN: All right.

Again, I guess I really don't understand the connection between the computer system and that, because these applications for Cal Grants are not filed online; are they? So, somebody has to sit down and enter the data that's on the physical piece of paper into the computer system.

I wish Senator Cedillo were here, but he's not. That's the way it goes.

SENATOR BATTIN: We've waited; we've delayed; we've stalled.

Senator Ashburn, do you have a question?

So how about we just do this. We will thank you for now. We'll go through the rest of our agenda, which won't take that long. Then, if Senator Cedillo gets here, he can ask you some questions that I know he's concerned about. If not, then we'll vote and get you on your merry way.

MR. JOHNSTON: That's fine.

[Thereupon the Rules Committee acted upon other agenda items.]

SENATOR BATTIN: So here we are and we're done, I guess.

SENATOR BOWEN: Except we don't have enough

votes.

SENATOR BATTIN: We can leave the roll open and have Senator Cedillo add on with Senator Perata when he comes back. Is he coming back?

SECRETARY WEBB: Senator Perata? He said he was.

SENATOR ASHBURN: Is there a motion? Do we have a motion on Mr. Johnston?

SENATOR BATTIN: Yes.

SECRETARY WEBB: Yes, Senator Battin made the motion.

SENATOR BATTIN: So, let's take care of him now. We'll just let Senator Cedillo come back and add on.

So please call the roll on Mr. Johnston.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Bowen.

SENATOR BOWEN: Aye.

SECRETARY WEBB: Bowen Aye. Battin.

SENATOR BATTIN: Aye.

SECRETARY WEBB: Battin Aye. Three to zero.

SENATOR BATTIN: We will leave the roll open, but congratulations. That's enough to get you out of the Committee.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 3:12 P.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of June, 2006.

Evelyn J. Mizak

EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

RESPONSES TO SENATE RULES COMMITTEE QUESTIONS

JOHN DOVEY, DIRECTOR
DIVISION OF ADULT INSTITUTIONS
CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

Mission

1. ***As the person responsible for adult custody, the largest single segment of the Department of Corrections and Rehabilitation (CDCR), please describe your goals. What do you hope to accomplish? What achievements stand out since the reorganization of CDCR has occurred?***

There are several goals I hope to accomplish during my tour of duty. First, I genuinely believe that we can do more to reduce recidivism; however, we must provide a safe work environment for our employees as well as a safe rehabilitative environment for our offenders. The institutions are operating with unprecedented overcrowding and high staff vacancies, so naturally, I am very concerned about the impact of these challenges as I look towards the future.

My first goal is to redefine how we manage gang members within the institution and implement strategies that will neutralize the threat of violence, intimidation, and peer pressure gangs and other security threat groups bring to bear. I am deeply committed to moving the Department away from a "label based" system of inmate accountability to a "behavior based" system. Contrary to the environment today, we must actively engage the offenders and allow them to be responsible for their own decision making – something that does not happen frequently within the institutions. The environment we create within the institutions must be one that allows offenders to make a choice when they enter – either to disregard the safety of others or to commit themselves to a path that will impact the criminogenic factors that brought them to incarceration. Implementing an effective strategy will be pivotal in the success of all other programs and in making the environment safe for both staff and inmates.

Another goal I have is to implement a viable risk-needs assessment instrument for every offender upon reception into the Department. In my review of other correctional agencies throughout the nation, implementation of a validated risk and needs assessment instrument has been the cornerstone for successful outcomes and provides staff members, as well as the offender, with a road map to follow for more effective programming. Validated risk needs assessments strive to improve offender management at the facility level by addressing housing, programming, and compatibility issues.

Over the course of the next three years, I have committed to initiate in-cell integration in all California prisons. While this goal may have come about through litigation, I have taken this goal very seriously and I strongly believe it can be accomplished in a safe and efficient manner.

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Since the reorganization, I have been able to focus my attention on the adult institutions and the headquarters structure for the Division of Adult Institutions (DAI). With this focus, it has become clear to me that while there may be many demands placed on the Department, and while there may be many challenges we face, nothing outweighs the requirements of custodial security and of the safety of staff, our offenders and the public. I have committed the division to clearly focus on maintaining what I call "seamless security." By that I mean our job is always going to focus on the provision of well-managed safe and secure correctional institutions. We are reestablishing a regular cycle of facility security audits and I have been successful in obtaining technical assistance (similar to a grant) from the National Institute of Corrections (NIC) which has allowed practitioners from California to be trained by the NIC and participate in security audits in other states. In return, we will soon benefit from this collaboration when three California prisons are subjected to a security review by a national team of correctional experts. At my direction, staff within the DAI are developing a regular security audit schedule so that security audits are conducted year round.

I have been an advocate of improving the work environment for staff through the assessment of organizational culture. While still relatively new in corrections, the assessment of organizational culture is a key strategy in successful business enterprises in the private sector. During the last year, we conducted prison culture assessments at California State Prison (CSP) Corcoran, Salinas Valley State Prison and at the Central California Women's Facility. Assessing organizational culture is only the beginning of the process, however, and working through a technical assistance grant from the NIC, I have been successful in establishing a contingent of staff who have been specifically trained to facilitate a week long course known as "Promoting a Positive Prison Culture." The class has been provided at the preceding three institutions as well as Calipatria State Prison. Plans are underway to provide the course to staff at the California Institution for Men in the very near future. The work has been crucial in allowing staff in these locations to overcome the barriers seated deep within each institution's culture. Overcoming these barriers has enabled staff to make changes to the culture that could not have been accomplished in any other fashion. I am currently in the planning process for the next prison culture assessments which will begin in the next fiscal year. One of my goals is to conduct three cultural assessments each year as an ongoing process to improve the work environment, employee performance, and programmatic outcomes.

Another goal I am pursuing is to better prepare offenders in Security Housing Units and Psychiatric Services Units for transition back to the general population and release to parole. The California Department of Corrections and Rehabilitation (CDCR) has long been criticized for failing to provide a realistic program to inmates who refuse to program appropriately, and become involved in disruptive and/or violent behavior. The *Estelle Transitional Program* (ETP) was

crafted to manage these inmates and program these inmates within the SHU and the PSU. The CDCR intends to implement the ETP at six institutions, beginning with a pilot program at Pelican Bay State Prison (PBSP). The ETP is a computer-based program allowing inmates to interact with instructors through the use of closed-circuit technology without leaving their assigned cell.

Finally, my goals would include establishing an in-custody program for sex offenders during their period of their incarceration. With over twenty thousand sex offenders in custody in our system, I believe public safety would be better served by implementing such a program. I have seen programs of this nature in other States and strongly believe this to be a public safety issue, as no programs are currently offered with the Division of Adult Institutions. Research commissioned by the Colorado Department of Corrections in 2000 identified that 43 states have such programs.

2. ***What do you believe are the most significant issues facing the CDCR adult division?***

The complexities of issues facing CDCR DAI are immense. They range from over-population, workforce shortages, aging infrastructure, increasing inmate violence, court compliance, inmate programming deficiencies, fiscal accountability, and diminished credibility with the Legislature, media and the public to name just a few. I have worked hard to develop strategies to address these and the other challenges facing DAI. I commit that I will continue leading DAI through these challenges and establish CDCR as a national leader in managing one of the most immense and diverse prison populations in the world.

<u>Population</u>

Develop short, intermediate and long term planning for new beds that includes space needs for support/programming/health care services.

Explore efficiencies within current system (ASU/HIV/Mental Health, etc).

Develop risk assessment tools to place inmates in least restrictive and cost effective bed that focuses on inmates' individual needs and prepares for reentry into society.

<u>Workforce Shortages</u>

Implement strategies to recruit and retain a well trained workforce: Recruitment teams; efficient background process; effective Academy (community college involvement); reasonable disciplinary process; working relationship with unions; meaningful grievance process; succession planning (warden's coaching, leadership training).

Aging Infrastructure

Seek resources to repair and maintain physical plants; prioritize and implement preventative maintenance systems; implement Information Technology systems to enhance efficiencies; place the right inmate in right bed to enhance life expectancy of aging infrastructure; and seek reasonable staff resources to maintain physical plants.

Inmate Violence

Aggressive gang management strategies that emphasize removing negative elements from prison environment(s) and permit inmates wishing to program with positive opportunities; Behavior Modification Unit (BMU); drug eradication; education; cooperation with DA's/Law enforcement for public safety strategies; continued training for staff on incident management (alarm response, CRT, NMT).

Court Compliance

Strategies to remove barriers from expanding court expectations – access to care, medical/mental health care in prison settings; increase credibility with court representatives; pro-active problem resolution; collaboration with private/public entities for delivery of services and cultural change(s) to adapt to court direction and effective communication to blend court mandates with safe and secure prison standards.

Inmate Programming

Develop strategies for expanded and evidence based programming – gender specific programming, education, substance abuse programming, Self-Help, Re-entry, parole, after care. Creative expansion and more efficient use of existing programming opportunities must occur to increase our effectiveness toward recidivism reduction.

Fiscal Accountability

We must increase credibility with external control agencies and the Legislature, and continue aggressive auditing; undergo regularly scheduled fiscal review and timely adjustments; support negotiation of employee union contracts; and maintain strict accountability at the field level to manage resources.

Credibility with Legislature/Media/Public

We must provide truthful introspection of, and proactive response to, deficiencies. We must effectively communicate our strategies; and emphasize accomplishments

and failures. Maintain honesty and accountability in the organizational culture changes; and enhance education about the positives and negatives of the system.

3. ***How should the Legislature evaluate your performance? What yardsticks would you choose to measure your success?***

The Director of the Division of Adult Institutions is the leader. Leaders are responsible for everything that happens, and for everything that does not happen in their areas of responsibility. The area of responsibility of the Director includes, management of the daily operations of 33 institutions, 42 conservation camps, more than 50 community-based facilities and an inmate population of approximately 170,000 adult felons. This Division, it has been said, is one with high risk-low tolerance. This is a tremendous responsibility; one which I willingly accept. My performance as the leader of the Division will be measured each and every time a Warden appears at COMPSTAT, a process used successfully in New York by, then Mayor, Rudolph Guiliani and also more recently in Los Angeles by William Bratton, Chief of Police. As the performance metrics of each prison is reviewed, my performance is being reviewed.

My goal is to provide public protection and effective services to the citizens of the State of California. Achievement of this goal will include providing a safe working environment for staff, and a safe living environment for offenders; an environment in which effective programs will be administered to provide evidence-based rehabilitation for the offenders under my charge and facilitate their safe and successful reintegration back into our communities following incarceration.

The most appropriate and effective performance measure for any leader is the evaluation of their leadership abilities. These are the yardsticks I would chose to measure my success.

Leadership

Commitment to Public Service

Does the leader demonstrate commitment to public service as reflected in his/her understanding that their conduct must always be above reproach and everything they do must be thoroughly deserving of the public trust and confidence?

Ethics

Does the leader demonstrate commitment to doing the right thing even when there may be consequences? Does the leader place the welfare of others above his/her own?

Integrity

Are the words and actions of the leader consistent? Does the leader do what he/she says they will do? Does the leaders conduct provide a good example for others, including the public, employees and inmates?

Honesty

Does the leader demonstrate honesty as the highest of values?

Vision

Does the leader thoroughly understand the vision of the division? Does the leader effectively communicate that vision throughout the division? Does the leader effectively enlist others under his/her command in support of the vision?

Knowledge

Is the leader thoroughly knowledgeable in the missions of his/her areas of responsibility? Does the leader effectively monitor the daily operations of his/her areas of responsibility?

Communications

Does the leader regularly and effectively communicate with subordinates, peers, supervisors and stakeholders? Does the leader effectively elicit input through two-way communications? Are others comfortable and willing to provide opposing points of view?

Team Building

Does the leader understand the value of diversity and demonstrate the ability to unite others into an effective team to accomplish desired goals?

Empowerment

Does the leader demonstrate the ability to select, develop and empower others to effectively perform their duties and fulfill their responsibilities? Does the leader understand the purpose and value of discipline in the development of others and does he/she provide an appropriate supportive environment while still holding others appropriately accountable for their actions?

Effectiveness

Effectiveness, as demonstrated in the successful daily operation of the Division. Does the leader have effective policies in place, consistent with the vision and mission of his/her areas of responsibility? Are policies and procedures reviewed and updated, as necessary to keep them current and effective? Does the leader insure others responsible for specific areas/functions are knowledgeable in the appropriate policies and procedures?

Decisiveness

After having appropriately considered input, does the leader demonstrate the ability to formulate decisions? Does the leader demonstrate the ability to make tough decisions; the courage to make the right decision-not necessarily the popular decision? Does the leader fully accept responsibility for his/her decisions/actions?

Managing Conflict

Conflict is an ever present component of Corrections and Rehabilitation. Does the leader avoid conflict or handle it effectively? Does the leader demonstrate the knowledge that not all conflict is bad, and the ability to appropriately use conflict positively and resolve it appropriately?

Facilitating Change

As with conflict, change is inevitable. Historically, the criminal justice system has been slow to change. Does the leader demonstrate the understanding that most resistance to change is rooted in fear? Does the leader accept the role of change agent and demonstrate the ability to alleviate the fears of others, as necessary, to facilitate the change?

Experience has taught me that the performance of high level Public Servants is often the product of the response to headlines in the daily news media subsequent to a report of a sensational incident. While I cannot guarantee there will be fewer incidents or that there will never be a sensational incident (I don't believe anyone could), I can assure the Legislature that my every effort will be given to provide effective leadership of the DAI for the California Department of Corrections and Rehabilitation.

Population

In April 2006 the Inspector General noted that the department's ability to deal with long-standing problems is "severely hampered by inmate population pressures...spreading staff resources thin and leaving little facility space available for programming and other purposes."

4. ***What is your view of how CDCR can best manage the population crisis? What tools are available to you? Are you seeking alternatives to your current population management strategy?'***

CDCR must dedicate resources to the constantly changing demographics and pressures placed on the correctional system. The Director of Adult Operations is ultimately tasked with "operations" within the system. I will continue to focus on daily prison operations, including population management, to provide safe housing

and programming to our inmate population and develop strategies to address the changing demographics and increasing violence within our system. I will continue to make the establishment of inmate programs that provide the dual advantage of making our prison environments safer and permit inmate opportunities for rehabilitation a priority.

California has the largest prison population of any state in the nation, with just over 170,000 and the population is spiking. CDCR has used approximately 15,000 non-traditional beds such as dayrooms, gyms, triple-bunking to manage population pressures. Use of these non-traditional beds, and those anticipated for future activation represent an increasing security challenge to our prisons.

A departmental taskforce, known as Right Prison/Right Mission Workgroup, has provided thoughtful analysis for future population decision making. Using this core analysis, a short, intermediate and long term plan was developed to address the current population bed deficiency. This plan did not, however, identify both base and overcrowding space and infrastructure needs in the prisons. Using existing construction space standards and updated construction cost models, a comprehensive plan to address space/infrastructure deficiencies, both base, overcrowding and proposed new construction, is being developed. The first such effort of this magnitude will provide CDCR and external stakeholders with detailed analysis to add bed capacity and commensurate program and support space to manage the increasing inmate population.

I view the existing population crisis as the highest priority for DAI and CDCR. I am proud of the efforts taken each day within our prisons to meet our statutory requirement to house adult felons. I will maintain my commitment to meet that statutory requirement and continue to develop strategies to meet this most paramount priority of CDCR.

5. ***In the chain of command, what responsibility do you have for managing population? Please provide examples of the type of population management decision you would delegate to managers beneath you, including wardens. What decisions would be made by the Chief Deputy Secretary of Adult Operations to whom you report?***

I believe the Director has ultimate responsibility to provide policy direction and planning for adult population management within CDCR. This includes oversight of daily operations and coordination with outside law enforcement for the secure transport of prisoners. The complexities of population management and the impact to our core business literally touch every level of the organization. The DAI Director must provide executive leadership and assume ultimate accountability for this core function.

The immensity of population management in an organization of our size requires delegation on many levels. Headquarters oversight of field population management and efficiencies is essential. This work is typically delegated to the Deputy Director, Associate Director(s) and headquarters staff on a daily basis. Such tasks would include monitoring of population census, administrative segregation bed utilization, monitoring of resources for activation/deactivations, and policy development, training and implementation, to name a few.

The daily oversight at the field level is delegated to the Wardens and their staff. Such duties would include the same oversight mentioned above and additionally include such functions as enforcement of single/double cell policy, effective oversight for managing the use of administrative segregation, ensure maximum utilization of beds, monitoring of the inmate classification system, assessment of approved sanctions for inmate noncompliance.

Departmental decisions regarding population management would be under the purview of the Chief Deputy Secretary in consultation with the Director. State-wide policy decisions, like mental health, gang management, private/public contractors, would require department-wide evaluation and concurrence. The Chief Deputy Secretary's involvement and subsequent communication to the Governor, legislative staff, and the public of policy implications ensures proactive communication to external stakeholders and seamless implementation of sound custodial practices. CDCR's ability to communicate the complexities of population management to all involved is a dual responsibility of the Director, Chief Deputy Secretary and, ultimately, the Secretary's leadership.

6. ***What is your estimate of the amount of program space lost to housing units as the population has grown? Approximately how many inmates are triple bunked at which institutions?***

Currently there are 9,739 inmates located in 69 gymnasiums at 26 institutions; and 2,997 inmates located in dayrooms at 15 institutions. Based upon the increases in population, it has been necessary to utilize these areas for non-traditional, temporary overcrowding housing. Based upon the current standard design for new construction of 7,397 square feet for a typical gymnasium, and approximately 32 square feet of dayroom area needed per inmate, it is estimated that approximately 606,297 square feet of program space has been lost to inmate housing.

Currently the CDCR has activated 1,538 triple bunk units at six institutions with a total capacity of 4,614 inmates. These beds are located at: Avenal State Prison (ASP), Chuckawalla Valley State Prison (CVSP), Pleasant Valley State Prison (PVSP), Richard J Donovan Correctional Facility (RJD), Substance Abuse Treatment Facility (SATF), CSP-Solano (SOL).

Staffing

7. ***What role do you play in the selection of wardens? What specific expectations do you have of wardens? What is your responsibility for evaluating the success or failure of a warden and how have you translated your expectations into performance standards?***

As the Director of the Division of Adult Institutions, my role in the selection of wardens is multifaceted. The Organizational Plan reflects the Wardens report directly to the Associate Directors in one of five distinct mission-based areas, indirectly to the Deputy Director and ultimately to me. Wardens, of course, are key administrators in this Division, with tremendous responsibilities and significant impact on the success or failure of the Division. For these reasons, I take a very personal, hands-on approach in their selection.

Because of my tenure with the Department of Corrections and Rehabilitation, I am familiar with virtually all of the managers who make up the candidate pool for consideration for the position of Warden. Additionally, as I have served as a Warden, I am thoroughly familiar with the duties, and responsibilities of the position.

It is my responsibility to ensure selection of the best qualified candidates for appointment as Wardens. I address this important responsibility long term, through a combination of training and succession planning. Those who are possible candidates for Warden may differ significantly in their qualifications, experiences and developmental levels. Therefore, effective succession planning

involves on-going evaluation of their strengths and weaknesses and taking necessary measures to provide for their development. My subordinate managers and I can and do provide opportunities for growth and development through monitoring of current performance, delegation of projects and often, acting assignments. Through our efforts we contribute to the development of a large and diverse candidate pool. In that manner, we are best prepared to fill a Warden's position well in advance of a vacancy.

Final selection requires the candidates to apply for consideration. Their applications and qualifications are thoroughly reviewed and competitive interviews are conducted. Candidates are rated competitively and recommendations are made based upon the best qualified candidate for the position to be filled. Candidates recommended must then be thoroughly reviewed and vetted by the Office of the Inspector General. I am as involved in every aspect of the development and selection of Wardens.

My expectations for Wardens Is very high, but no higher or lower than my expectations for myself. My expectations include, but are not limited to:

- Having a commitment to public service
- Being ethical in all their actions
- Being as thoroughly knowledgeable and prepared for the position as possible
- Being a strong, yet fair and humble leader
- Effectively monitoring all aspects of their areas of responsibility daily
- Being proactive in managing their areas of responsibility
- Setting a good example for others both on and off the job
- Effectively interacting with others at all levels and classifications
- Considering as broad a range of input as possible when making decisions
- Being decisive and willing to take full responsibility for their own actions and the successes and failures within their areas of responsibility
- Taking an active role in the development of others under their command

While Wardens are evaluated by many others, including the Associate Directors and the Deputy Director, I am ultimately responsible for evaluating their success or failure.

My expectations are conveyed to Wardens through those to whom they directly report and by me personally both verbally and in the example I set. Further, expectations are regularly reinforced through frequent meetings and directives.

It is my philosophy that while performance reports are prepared at regular intervals, evaluation of performance is a continual process. To that end, I have recently helped to initiate a process called COMPSTAT. This is a process for gathering comparable statistics for a number of factors, identified as critical to the

success of the institutions in the Division and for the CDCR. Wardens are responsible for personally monitoring these critical areas, for on-going compilation and analysis of the data and for timeliness in taking effective and appropriate measures if the data reflects an area of concern. Formal "performance inspections" are conducted at regular intervals with me and the Secretary of the Department, in which Wardens are expected to be thoroughly knowledgeable and responsive to any concerns identified. The Wardens' performance in managing their areas of responsibility is evaluated during these regular reviews.

COMPSTAT, as a process, is an effective tool for identifying potential problems, and "best practices," as well as, evaluating the performance of the Wardens. It is a process by which expectations are conveyed and reinforced, as well as, a process that can significantly contribute to meeting those expectations and the over-all effectiveness of the CDCR.

8. ***Many wardens are at or near retirement age. A number of others are serving in an "acting" capacity. What training is currently available to develop managers, including potential warden candidates? Are there plans for additional training? How should CDCR develop potential leaders for the adult custody division?***

The CDCR, through the Office of Training and Professional Development, has embarked on an aggressive staff development plan to provide quality leadership development from the top down so that employees in all areas of the Department have the knowledge, skills, abilities and competencies needed to fully implement the reforms planned for CDCR. This is a multi-level leadership development and succession strategy to assure that offender and public safety reforms continue uninterrupted into the next decade. It is acknowledged that due to the anticipated retirements at all levels of the organization; CDCR must develop potential successors on a more accelerated learning curve than ever before.

The programs are more than the typical "off the shelf" training. The Department is contracting with the College of Continuing Education at California State University, Sacramento to provide staff development under a "public-public partnership" umbrella that brings the resources and expertise of the CSU system together with CDCR needs and internal experts. The goal is to create a high quality, sustainable, and comprehensive training and staff development program and ensure that each offering achieves measurable learning outcomes for participants and for the Department.

The Leadership, Management, and Supervisory staff development programs now being implemented are designed to prepare staff with the tools (knowledge, skills and abilities) needed to be effective immediately, and to provide in-depth training and development opportunities to refine and enhance skills as staff progress to higher levels in the organization. In turn, the staff development program is part of

building a larger learning organization that expects all staff to apply these new competencies on the job, reinforce their own learning through mentoring and coaching of other staff, serve as trainers for less experienced staff, and demonstrate through their actions the value of continuous learning and development.

Leadership for Managers and Executives

CDCR, in partnership with CSU, Sacramento, developed the Leadership Development Program (LDP) for CDCR managers. The focus of this highly interactive learning program enables staff to access and develop their leadership skills, to integrate leadership theories and practices, and to address critical correctional professional issues confronting CDCR.

In addition to addressing personal growth and professional development issues, this program focuses on such strategies as dealing with power, politics and change; multigenerational workforces; trust; and organizational transformation. The program includes the five leadership practices of Kouzes and Posner, which are key in refocusing the CDCR leadership on the rehabilitative mission, changing the CDCR culture, and encouraging the use of common leadership language and behaviors.

Faculty and program staff have been acclimated to the CDCR environment by a series of immersion experiences, including adult/juvenile facility tours and adult/juvenile parole "ride alongs." This is a customized program designed specifically for CDCR and each class will discuss issues drawn from current organizational challenges.

- An executive version of the leadership program, the Executive Leadership Training Program (ELTP), was conducted in November-December 2005 with 90 executives participating.

- The Leadership Development Program, designed for designated managers, began in January 2006, and will continue through 2008. Approximately 300 managers have participated in the program since January 2006. It is estimated that 900 managers will participate in this program in total.

Leadership for Supervisors and Middle Managers

In FY 2006-07, the Department will offer a leadership development program in partnership with a private provider for first and second line supervisors. Approximately 25% (1,500) of the Departments' supervisors will participate in the first year. This leadership program is based on the same leadership principles as the managers' program. Each participant will receive an assessment of their

leadership practices from their subordinates, peers and supervisors and will develop a personal leadership plan.

Management and Supervisory Development

In partnership with the NIC, the DAI is actively supporting programs that bring national best practices to California's prison system. Management staff have participated in the following programs during FY 2005-06:

- Wardens Development Program
- Promoting a Positive Prison Culture

The Department is currently working with California State University, Sacramento to design a new supervisors training program for first-line supervisors and to design a management-training program for new managers. The goal is to determine how best to partner with the CSU system to improve the quality and timeliness of these programs for new supervisors and managers. Pilot sessions are planned for fall 2006.

The Department is encouraging staff to participate in the American Correctional Association's (ACA) Correctional Certification Program. This program is designed to advance the overall knowledge level of practitioners in the corrections field, promote the capabilities of corrections professionals to the public, and enhance society's image of corrections personnel and, thereby aid in the recruitment of new, talented staff members. It provides a national, voluntary method by which individuals can gain recognition as qualified corrections practitioners. CDCR employees have expressed interest in this process, but participation levels are not known at this time. Certification is currently offered in the following categories:

- Certified Corrections Executive (CCE)
- Certified Corrections Manager (CCM)
- Certified Corrections Supervisor (CCS)

Coaching and Mentoring

The rapid movement of staff into management and leadership positions has left a gap in the preparation of some individuals. The Department has implemented a leadership development process and is designing a comprehensive management development program. Currently, the Department is utilizing existing, high quality training programs such as the NIC Warden's Development Program. These programs will address the knowledge portion of the need. In order to fill in gaps in the practical application of these skills to the responsibilities of high level management positions, the Department is embarking on a formal coaching and mentoring program that will pair experienced (often retired) managers with new

managers. Phase 1 of the program is scheduled to be implemented in June – July 2006, and will provide structured options and selection criteria for mentors that can be tailored to the needs of each new manager.

As the Department gains experience with the mentoring models, and as the management training programs are implemented, the expectation is to expand coaching and mentoring in Phase 2 to include additional levels of middle managers. These expanded training and mentoring programs will assist the Department to ensure that there is an adequate pool of people that are prepared to assume increasingly responsible positions throughout this organization when they are needed.

Fiscal Year 2006-07 and Beyond

In summary, during the past year, the Department has focused heavily on implementing leadership training at all levels. Now that these programs are in place or nearly so, the focus of the Office of Training and Professional Development is expanding to management and supervisory development. The needs are great in these areas as well. During 2006-07, the Department will be designing and pilot testing a variety of new training programs for managers and supervisors, and will implement full scale programs as soon as appropriate models are created and resources are identified.

9. ***What role does a warden currently play in budgeting for his/her institution? Is each institution responsible for maintaining a budget "in the black?"***

Wardens are responsible for operating within their budget. They are responsible for ensuring that there are no unbudgeted expenditures and that no unauthorized positions or programs are created. Emergency expenditures for which there is no funding must be reported to the applicable Associate Director and to Budgets. Additionally, the Wardens are responsible for understanding the programs/missions that are budgeted and are responsible for developing implementation/operating plans that tie to the budget. The Wardens are responsible for establishing local processes that provide for the routine review of expenditures/projections against the allotments, and for identifying potential issues in a timely manner.

Each Warden is responsible for ensuring their budget stays within budgeted allocations and that expenditures are essential and justified. In order to monitor the institutional and Headquarters budgets to identify potential management issues as well as to identify and address budgetary structural deficiencies, fiscal reviews are done bi-annually or as needed. Additionally, beginning in July, I will be briefed on a monthly basis by the Fiscal Office to discuss budgetary issues, corrective actions being taken, and additional actions required.

10. ***What percentage of the total corrections workforce do you expect to retire in the coming year? Will you have enough new staff to replace retirees?***

Percentage of Retirement Eligibles

An analysis of employees who are eligible to retire during Fiscal Years 05/06 and/or 06/07 was conducted utilizing retirement averages obtained from CalPERS based upon age and years of State service. Data was obtained specific to CDCR's workforce as of January 1, 2006. Retirement eligible staff are those who meet or exceed the average age/years of service of recent retirees and are therefore most likely to retire. However, it is unknown when those that are eligible will actually retire.

ELGIBLE RETIREES (January 1, 2006)			
Employee Workforce Grouping	**Total Number Established Positions**	**Total Number Retirement Eligible Staff**	**Percentage Eligible to Retire**
Exempt	291	59	20.3%
Managerial	863	252	29.2%
Supervisory	7,550	709	9.4%
Rank and File	50,026	1,254	2.5%
TOTAL	**58,730**	**2,274**	**3.9%**

TOTAL SERVICE RETIREMENTS (July 1, 2005 through April 30, 2006 – 10 months)			
Employee Workforce Grouping	**Total Number Including Custody Classifications**	**Total Number (Custody Classifications Only)**	**Retirement Rate Total Retirements/ Total Est. Positions**
Exempt	26	9	8.9%
Managerial	100	80	11.6%
Supervisory	327	206	4.3%
Rank and File	936	491	1.9%
TOTAL	**1,389**	**786 (58.8% of all retirements were peace officers)**	**2.4%**

Note that this represents a ten-month period. Extrapolated to a full year, the Department anticipates an additional 278 retirements, for a total of 1,666.

New Staff Replacements

Filling vacancies driven by projected retirements is only part of CDCR's need to have new staff replacements. There are numerous factors that impact CDCR's ability to replace retirees as well as to fill vacancies generated by other events. Some are not within CDCR's ability to control. Factors that drive challenges in having adequate staff replacements are the following:

- Size of CDCR's workforce (currently over 58,730 established positions);
- Diversity and number of occupational categories. For instance, CDCR has over 500 classifications. Many of these classifications are unique having only 30 or fewer positions in the class statewide. A 24% vacancy rate is reached with only 7 vacancies, and it becomes critical to recruit, test and fill these positions immediately. The impact of high levels of vacancies in classifications with small numbers of positions is hidden when rolling the numbers up into broad categories to get global percentages;
- Numerous hard-to-recruit classifications;
- Hard to recruit locations due to cost of living, geographic locations, isolation from metropolitan areas, etc.;
- Court order mandates to expedite recruitment and hiring processes for select classifications (thereby causing time delays in administering exam processes for the majority of CDCR's classifications) diverts staff from performing other necessary examinations;
- Ongoing and high vacancy rates;
- Lack of equitable salary range between ranks (less than 5% in some cases) has led to serious compaction; which has made promotions less attractive.

Succession Plan

Because of the high level of vacancies and anticipated retirements, compounded by the factors listed above, the Department has identified workforce and succession planning as a critical need. The goal of this effort is to ensure that critical vacancies are filled with appropriately prepared staff and that CDCR is not caught unaware by retirements. The initial focus of the Succession Management Plan (SMP) is on CDCR's Executive Leadership (exempt positions). Phase II will address managerial, supervisory and represented classifications.

- Phase I: CDCR is working with CSU Sacramento to develop a succession management plan for executive leadership. It is anticipated that the plan will be finalized by July 2006 and will identify projected retirements, key positions and projects, training and professional development components, and recruitment, examination, and hiring needs.

- Phase II: CDCR will collaborate with CSU Sacramento to identify critical and priority classifications to include in this phase, expected to be completed by December 2006. Departmental representatives from each CDCR career field will be included in the collaboration so that each area can take ownership of the SMP and provide input into action plans that facilitate meeting organizational needs.

Implementation of the SMP will require alignment of efforts by leaders of program Divisions and by multiple areas within Human Resources. Recruitment, selection and examination, hiring, training and development, coaching and mentoring

activities are being geared up to ensure that there are pools of qualified candidates for key vacancies.

11. ***What is your role in maintaining a flow of new staff from the academy?***

Maintaining the pipeline of eligible candidates to fill all available seats in our academy is a departmental priority. The facilities under the DAI have an 8.55% vacancy rate with over 1,975 vacancies. The highest individual institution vacancy rate is above 16% and seven institutions have a vacancy rate greater than 10%. Operational vacancies, i.e., those additional assignments driven by overcrowding, sick leave and medical guarding have only served to exacerbate the demands placed on our line custody staff. With retirements and ongoing attrition, the Department has projected correctional officer vacancies will increase to about 4,000 vacancies in the next fiscal year.

While management responsibility and oversight for academy operations rests with the Office of Peace Officer Selection and the Office of Professional Training and Development, within the Human Resources Division, I believe my involvement in the process is critical. For example, in the budget year, I advocated for expanding our current academy by adding an additional academy. A temporary offsite academy at the former Northern California Women's Facility has been established. This increase will allow the current cadet total of 1,920 to rise to approximately 3,700 cadets trained yearly. In order to ensure academy operations are successful, it has been my responsibility to canvas the prisons and redirect supervisors and other qualified instructors to the Academy.

I have also provided my support and leadership to establish additional satellite academies being conducted in various locations around the State. For example, in order to recruit local candidates in the remote location of Susanville, I approved a request submitted by Wardens Kathy Prosper and Tom Felker to conduct an academy at the High Desert State Prison (HDSP) in Susanville. This academy will provide approximately 85 Correctional Officers for California Correctional Center (CCC) and HDSP. Unlike many other cadets assigned to these institutions who seek transfers back to institutions near their community, these employees will want to make long term commitments because they are already residents of the Susanville area.

I have provided support and leadership with the community college pilot program. Twelve campuses applied and three were selected based upon a competitive review of their applications. The three campuses are: Fresno City College, Santa Rosa Junior College, and Napa Valley College. Each site has committed to graduating at least 20 cadets during the life on the pilot. College pilot courses are certified and equivalent to the Basic Correctional Officer Academy offered by CDCR. Students who successfully complete the training and the CDCR's pre-employment process for new peace officers will be offered employment as

Correctional Officers in the adult institutions. Working with the local prisons and the Community Colleges, I have facilitated logistics requested by the colleges with the goal of providing the CDCR the opportunity to evaluate the efficacy of all three pilot programs.

Finally, I have advocated in support of the department's recruitment efforts and have directed Wardens to select staff to participate in recruitment efforts throughout the State.

12. ***What is your role in addressing labor issues with the unions who represent your employees? What is your system for staying informed of staff grievances? What training do your managers receive to address labor issues as effectively as possible?***

In order to stay informed of employee labor issues, I meet regularly with the Assistant Secretary, Office of Labor Relations and ensure that representatives from this division are included in our weekly staff meetings. One of our best opportunities for communication has been at our Wardens' Meetings. The Office of Labor Relations has always participated in our meetings to provide leadership within the DAI and to provide the most current information in this area. I have directed staff to include the total number of employee grievances for each institution in the COMPSTAT Summaries, which are represented in both total number of grievances as well as total per 100 employees.

On a monthly basis, my division coordinates a statewide Supervisory/Managerial conference call. These calls are alternated between morning calls and afternoon calls in order to reach the widest circle of supervisors and managers. These calls have been instrumental in increasing communication between supervisors and managers in the institutions with those of us in headquarters.

Also on a quarterly basis, the Secretary has conducted meetings with members of the bargaining units. Information shared with me by the Chief Deputy Secretary, Adult Operations is another vehicle for information sharing.

Management training in the area of labor relations and employee discipline has been mandatory for all Wardens and other managers within the department. For example, last year the new employee disciplinary matrix was provided in a mandatory 8-hour classroom presentation for all managers. As revisions and refinements to the disciplinary matrix have occurred, I have directed the Associate Directors and Wardens to ensure all appropriate personnel have been apprised of the changes.

13. ***In the CDCR reorganization, much emphasis was placed on the department's zero tolerance for the "code of silence." What role do you play in enforcing this policy? How do you evaluate your progress and how should we measure your progress?***

During my tenure as Chief Deputy Director of the former California Department of Corrections and the current Director of the Division of Adult Institutions, I have played a primary role in a number of activities to eradicate any "code of silence" and to enforce the Department's zero tolerance for a "code of silence." For example, during 2005, an eight (8) hour mandatory Ethics/Code of Silence training was implemented statewide for all staff. In January 2006, following completion of the statewide training, data from the Division Adult Operations was collected regarding compliance with this mandatory training. The attendance rate was approximately ninety (90) percent statewide. To accommodate the staff who had not fulfilled the mandatory training (i.e. new hires, staff on extended leave or military service), ten (10) make-up training dates were scheduled for the Ethics/Code of Silence training at Headquarters. The Division of Adult Institutions is continuing to monitor full compliance within the institutions to ensure that all staff have received this valuable training.

A new CDCR Code of Conduct for all staff was implemented statewide in March 2005. The Code of Conduct includes, among other things, an expectation that each employee be responsible to report misconduct or any unethical or illegal activity and to cooperate fully with any investigation. The Code of Conduct was distributed to all staff via memorandum twice since March 2005, was published in the CDCR Staff News, and is posted at each CDCR worksite in a common area. I expect that all staff adhere to this Code of Conduct.

The CDCR's Law Enforcement Code of Ethics was revised in June 2004 and includes a responsibility for all peace officers to report any misconduct. I required that the revised Code of Ethics be included in each institution's In-Service Training Bulletin last year to ensure all staff were aware of the revisions to our Code of Ethics and the CDCR's new expectations. The revised Code of Ethics is also the oath we currently use to swear-in our new cadets.

The Employee Disciplinary Matrix was implemented in March 2005 and includes severe penalties for any staff participating in or condoning a "code of silence." For example, any involvement by staff in a coordinated effort with other employees to prohibit or prevent the reporting of misconduct will result in staff being dismissed, and any independent act(s) by staff which prevents or interferes with the reporting of misconduct will result in the staff being dismissed. Adherence to these and other penalties for misconduct that constitute a "code of silence" are required and supported by me. Additionally, the Bureau of Independent Review (BIR), Office of the Inspector General, tracks and monitors all individual cases that are being investigated by the Office of Internal Affairs (OIA) that may

contain "code of silence" elements. The Inspector General publishes a quarterly transparency report on the OIA's investigative progress and final disciplinary outcomes. As needed, we utilize the information we gain from our interface with the BIR and the information contained in the Inspector General's transparency report to revise policies and procedures, provide training etc.

14. ***What strategies have you employed to reduce sick leave usage and overtime payments? How do you monitor and what training or assistance do wardens receive to improve management practices?***

As a line Captain working at the California Institution for Men, I managed sick leave in several ways. I required subordinate employees to review employee attendance records to ensure there were no obvious patterns. I required supervisors to develop professional relationships to ensure staff could get a day off when they needed one and held employees who abused their sick leave accountable. Many things have changed since my position as Captain. First, some of the language in the current Bargaining Unit 6 Memorandum of Understanding has precluded management from managing sick leave today as I did when I was a Captain. While changes to the current MOU may be contemplated, there has been some level of success taken by managers in some locations and we are reviewing these strategies for replication system wide. Second, we continue to struggle with the high number of staff vacancies at many locations. I have spoken to staff in many institutions that have been ordered to work overtime on a regular basis. In some locations, staff were being ordered over nearly every day in order to fill the vacant posts. While the problem is improving, the vacant positions have placed a heavy burden on our line correctional officers, which contributes to the use of sick leave. Filling the vacant positions and modifications to the contract language will help reduce overtime based on employee sick leave to manageable levels.

The Division has made noteworthy strides in reducing overtime driven by administrative segregation overflow. In December, I asked for a review of every case retained in Administrative Segregation; the reasons for retention; and the length of time retained. I directed Wardens to actively manage their offender disciplinary and investigation processes and to ensure that inmates were not being retained in administrative housing longer than absolutely necessary. Despite large disturbances at several institutions, since March we have operated well within our budget authority. I continue to monitor Administrative Segregation housing on a weekly basis.

Another area I believe shows great promise for cost reduction is with medical guarding and transportation.

On December 10, 2005, I directed Division staff to assemble subject matter experts from the field to complete a review of prisoner transportation, guarding and security. The experts were commissioned to examine custody operations in

regional medical centers where numerous prisons are sharing the same hospital. The team is reviewing individual institution staffing assignments, and medical guarding overtime costs. The group has also canvassed other State correctional agencies to compare against. I am convinced this reexamination of our procedures will result in efficiencies and cost-savings and I hope to have the work group's recommendations by October 2006.

As for the Wardens, the new COMPSTAT Performance Review will enable the operation of institutions with similar missions to be compared against one another. The Associate Directors also play a critical role in monitoring the institution's monthly budget plan and providing the prison the support and resources needed for effective program management. Institutions are subject to various management reviews and audits. The Associate Directors work closely with the institutions to ensure that corrective action plans are prepared and carefully monitored. Another very tangible benefit of these reviews is that they serve as a vehicle to engage staff to higher levels of understanding and performance. Periodically, headquarters fiscal and program staff have and will continue to provide both classroom as well as hands on training within the institutions. Occasionally, when situations warrant more intensive resources and assistance, we have marshaled personnel from other prisons and headquarters as a resource team to help a Warden resolve a particular problem.

Coordination of Services

15. ***How do you coordinate with the other divisions of CDCR?***

- ***With the Chief Secretary of Adult Programs? Are you able to provide input on programs that should be changed or new programs you believe would be useful?***

Not only am I able to provide input, it is my belief I have an obligation to provide input into the many programs operated by the Department. The cornerstone of this relationship would be collaboration. For example, at my urging, the Office of Substance Abuse has agreed to open a 256 bed substance abuse program at our newest institution, Kern Valley State Prison. In preparation for our budget requests, I have worked with the Chief Deputy Secretary and her staff in support of establishing additional chaplain positions and community liaison managers within the adult institutions. In the course of my research of correctional programs offered in other states, I have turned to the Director of the Division of Education, Vocations and Offender Programs (DEVOP) and suggested we initiate a substance abuse program aimed to meet the specific needs of methamphetamine users – which I believe represents a crisis of epidemic proportions within our communities. Our collaboration has also been successful in establishing the Behavior Management Unit (BMU) pilot program which

requires a dedicated teacher position to administer the educational component of the program. Overall, I would rate these efforts to be very successful in establishing and maintaining programs that will be effective in reducing violence and promoting pro-social behavior.

- ***With the Assistant Secretary of Health Policy?***

 Again, I would describe the coordination of services and our relationship as one of collaboration. Having served as a Warden, I learned early that I would never be successful unless my colleague, the Health Care Manager/Chief Medical Officer was successful. I believe my job as a Warden was to remove barriers that prevented my colleague from achieving the goals established by the Health Care Services Division. When I came to Sacramento in April 2004 as the Chief Deputy Director, I adopted this same philosophy in my new role. We were faced with having failed to achieve licensure of Correctional Treatment Centers at several locations. I met with the Wardens and Health Care Managers of these locations and advised them that "failure was not an option," a phrase the Receiver has used in his written messages to CDCR employees. By setting the expectations and removing barriers, the Department successfully obtained licensure for in-prison medical facilities at Centinela, R.J. Donovan, North Kern State Prison, California Medical Facility, and CSP-Sacramento.

 In my current assignment, I have worked closely with the Assistant Secretary, Health Care Policy as well as the Director, Division of Correctional Health Care Services (DCHCS) in many arenas. Together, our divisions work closely with one another on a daily basis to solve problems, remove barriers and improve delivery of health care services to our population. The experiences I gained as a warden by working closely with colleagues in the health care division have set the standard by which I continue to operate today. In my former role as Chief Deputy Director, I assigned project managers to facilitate operational issues associated with health care and mental health care delivery systems. I continue to meet with these managers weekly in order to ensure I remain current in these areas and can react swiftly to address operational issues within my division. Colleagues

- ***Whose job is it to prepare inmates for parole, including application for government services on the outside such as Veterans Administration benefits? How do you ensure this preparation is occurring? What responsibility do you have for this preparation, which was known formerly as pre-release?***

 I genuinely believe that to one degree or another, this is everyone's responsibility. From a global perspective, I recently shared with graduating Correctional Officers at our Academy that, as they begin their careers, they will soon learn that they will be spending more time working with offenders than they

will with their own families. I believe every interaction can make a difference. I have seen all too often, cases where some staff have lowered their standards. I believe as staff members we have a responsibility to model socially acceptable behavior, and hold the offenders accountable to raise their standards.

One of the most promising programs within the CDCR aimed specifically at preparing offenders for re-entering the community is the Parole Planning and Placement (PPP) program operated by the Division of Adult Parole Operations (DAPO) within every California prison. The PPP program (formerly Pre-Release) was established in May of 2004. The DAPO PPP program staff are physically located in each prison.

Originally, DAPO staff was responsible for only assessing inmates who were first-time releases or Parole Violators with a New Term (PV-WNT), and with an Earliest Possible Release Dates (EPRD) of approximately 240 days. Exclusionary criterion consisted of; Civil Narcotic Addicts, inmates participating in the institutional Substance Abuse Programs (SAP) after-care programs, and inmates participating in DAPO's Transitional Case Management Program (TCMP) for HIV/AIDS. Effective January 1, 2006, the mission of the PPP was expanded to include a wider range of clientele. In addition to first time releases and PV-WNTs, the program has now been designed to provide assessments for eligible parole violators who have returned to custody (PV-RTC).

Originally the PPP program utilized the Parole Automation Tracking System (PATS) assessment program, as its assessment tool. However, a detailed review of the program indicated the need to utilize a research based risk and needs assessment tool. As a result the PATS program was replaced with Correctional Offender Management Profiling for Alternative Sanctions (COMPAS), which continues to be revised by Northpointe Institute for Public Management, in order to meet the specific needs of the DAPO. The COMPAS program is currently being used and evaluated by various correctional agencies throughout the United States.

The COMPAS tool will also be used to print a Resource Report/Case Plan (Offender Version) and provide it to the inmate prior to their release from custody. Additionally, all parole field staff will have the ability to view and print a copy of the COMPAS reports via their desk top computer. The COMPAS tool will work in conjunction with the pre-release planning information to meet parolee needs in the community and assess proper risk scores. These capabilities do not currently exist with the existing PATS program. COMPAS allows DAPO to perform inquiries on specific parolee populations regarding recidivism. Additionally, the COMPAS program has the ability for DAPO to extract critical data to help identify inmates who are at a high-risk of becoming career criminals, and to better the effectiveness of DAPO programs and community service providers.

Once the parolee/inmate has been assessed, the DAPO PPP parole agent evaluates the assessment. Based on case factors the parole agent will determine whether or not to refer the parolee/inmate to the PPP District Social Worker (DSW). In DAPO each parole district is assigned a DSW that is housed within the parole unit/complex, the responsibilities of the DSW include the development and utilization of community resources for the parolee population. If the parolee/inmate has been referred by the PPP parole agent to the DSW, it is the responsibility of the DSW to make the appropriate referral/placement into the program, based on the identified needs of the parolee in the assessment.

On my tours of the institutions, I have made a point of speaking with the parole staff and asking them about the program to ensure there are no barriers within the institution that might prevent them from completing their tasks. I meet regularly with staff from DAPO to ensure this program is operating effectively.

Many institutions have active veterans programs and I have directed those prisons that do not to initiate one. At the February Wardens Meeting, I invited several representatives of the Veterans Administration to make a presentation to the Wardens regarding resources and services available to our offenders. As a follow-up, I have directed the Wardens to name a contact person at each institution specifically to foster communication and program development. I am in the process of incorporating self help programs, the number of offenders served and other key indicators into our Division of Adult Institution report for COMPSTAT.

On a larger scale, working in collaboration with the Division of Adult Parole Operations, we are developing a proposal to include social workers as a part of a PPP program expansion. The specific purpose of this plan would be to ensure that every offender who returns to the community has applied for the benefits they are eligible for including, but not limited to Social Security, Medical and Veterans Administration benefits.

16. ***How can the Legislature determine who should be held accountable for progress or lack of progress in issue areas such as parole or program? Again, how should we measure progress?***

First, the Legislature needs to have a clear understanding of the different roles and responsibilities within the new structure of CDCR, with particular emphasis on what person or persons are ultimately responsible for policy development, implementation, program delivery, and monitoring of compliance. I believe it is the Department's responsibility to provide the Legislature with that clarity.

I believe there are many indicators that can be relied upon. Recidivism reduction is certainly one of those measures. All too often, demands are made for simple

solutions to very complex problems. I do believe we can make a difference, just how much will depend on the collaboration of many agencies and stakeholders.

There are, of course, more objective tools available to use in evaluating the performance of CDCR leaders. Clearly, the Office of Inspector General (OIG) would be one source. The Inspector General and his staff promote accountability "by rigorously investigating and auditing the CDCR to uncover criminal conduct, administrative wrongdoing, poor management practices, waste, fraud, and other abuses by staff, supervisors, and management." The OIG conducts various management audits and special reviews which are posted for review by the general public.

As we refine our COMPSTAT process, I would envision this process to be instrumental in allowing departmental leadership to make informed decisions aimed at removing barriers that would otherwise thwart program expansions, self help activity, access to care, or any other activity that contributes to the goal of reducing recidivism.

17. ***What is your responsibility for coordinating with the various court officials who oversee class action lawsuits filed by inmates against CDCR? Please discuss your specific role in the Plata health care case and the Coleman mental health care case.***

For all of our class action lawsuits, I have taken an active roll to remain fully engaged in these cases. As stated in my responses to previous questions, I work closely with the Director, DCHCS and the Assistant Secretary for Health Care Policy on both the *Coleman* and *Plata* cases to remove barriers that prevent offenders from accessing the care that they are constitutionally guaranteed to receive. I have interacted directly with Special Master Hagar as well as Special Master Keating and believe they would indicate my involvement has had a positive impact on these cases and would characterize my role as concerned, supportive and willing to make decisions in support of the good of the organization.

As the Director I meet with the Attorney General's staff, the Legislative Analyst's Office staff, the managers within the DAI and the DCHCS including the Associate Directors and Wardens, and the Health Care Managers to discuss solutions to the cases being filed by the inmates. I attend status review meetings and all parties meetings to provide input and oversight to the issues. I review the Quality Management Assurance Teams (QMAT) and monitoring tour results.

I work jointly on issues that relate to both custody and medical and produce joint signature memorandums with the Director of the DCHCS to direct our staff on processes that have been agreed to by both divisions.

I conduct on-site tours of our prisons to discuss with clinical and custodial managers the impact of ensuring our compliance with providing inmates access to health care.

18. ***CDCR officials have stated their intention to create a case management system that will begin when an inmate arrives at a prison and continue through the inmate's parole. What is the status of this effort and the timetable for it? What is the role of risk assessment in this process?***

One of my goals is to see the implementation of a risk needs assessment for every offender upon entry into the system. As previously mentioned in Question 15, the DAPO has already begun implementation of a risk/needs assessment prior to offenders being released. Working in collaboration with the Division of Education, Vocations and Offender Programs, a budget change proposal request was initiated last year for resources, such as contract services, equipment and staffing, which has tentatively been approved in the Governor's FY 2006/07 budget. CDCR staff representing several divisions are in the process of determining whether or not to standardize risk needs assessments used throughout the organization and to finalize the implementation plan.

19. ***Although self help programs such as AA, NA, and anger management are the responsibility of the program division of CDCR, what responsibility is a warden expected to take for the operation of these programs at each prison? Whose job is it to recruit potential sponsors who come into the prisons for these programs, and what is the timetable for performing clearance checks on them? Who determines the appropriate size of these programs at each site and which inmates on specific yards have access to them? Who should we hold accountable for their size, smooth operation, and ultimate success?***

From a global perspective, self help programs are the shared responsibility of the DAI and the Division of Adult Operations; however, Wardens continue to be responsible to ensure the programs are operating; that offenders are able to access the programs, and that overall there are no barriers that prevent access. I have directed staff to initiate a monthly status report submitted from each Warden that provides a snapshot of the number of self help groups that have met during the month and the number of offenders who attended. The initial report was received just as we initiated the COMPSTAT process. Within the DAI, four of the five missions have completed one appearance before the COMPSTAT Performance Review. After the missions have completed one appearance, the "dashboards" used by the missions will be standardized to include reporting of self help program activity.

I have made the importance of self help programs very clear to our Wardens and they will continue to be responsible for activities that occur within their institutions, including recruiting potential sponsors, timely processing of gate clearances, when

and where programs are offered, etc. I have been successful in obtaining increasing institution budget allotments to cover the costs of staff self help sponsors and also for custody staff in our higher level institutions in order to increase self help programs wherever it is possible to do so.

Gangs and Violence

20. ***The growth of prison gangs has been described as affecting every part of custody operations. What is your current gang management strategy and your evaluation of its effectiveness? What evidence-based system are you using to measure success? What best practices are you employing from other states?***

As mentioned previously, one of the most serious threats to the security and to the safety of both staff and inmates are the activities of gangs operating within the institutions. Our previous gang strategies have been a failure in terms of addressing violence in the general population. We used to believe that by building the Security Housing Units (SHU), we would "break the back of the gangs." While the SHU continues to play a critical role in segregating the most violent inmates, the SHU itself has not diminished the activities and influence of gang activities within our prisons. Strategies we have relied upon in the past have not had the desired impact and therefore, I believe we need to rework our entire approach to gang management in California prisons. I began that process last year by hiring a consultant to help define the problem and devise a broad strategy that would enable the Department to move from what I refer to as a "label based" system to a "behavior based" system.

Nationally recognized experts contend the most effective method for controlling prison gangs and their influence has been suppression efforts – especially those that reduce gang violence (such as the BMU pilot program). The long term goal of the CDCR is to implement institutional gang suppression programs designed to reduce institutional violence and improve existing gang management strategies. The reduction of gang activity increases institutional safety and improves access to rehabilitative programs and services.

The Department has identified a multi-level program for building a foundation to modify the current gang management policy and to implement the Crime Prevention and Safety Strategic Action Plan in order to ensure safe and secure facilities for both staff and offenders.

The CDCR will establish a Gang Management Workgroup of internal and nationally recognized subject matter experts in gang validation/management. This workgroup will recommend proven and national evidence based strategies/policies that focus on gang management and control programs; assist in

the development of a valuable risk identification tool; and develop relevant staff training.

Implementation Schedule

July 2006

- Activate Workgroup consultants and facilitate development of contracts;
- Identify field subject matter experts to assist with the projects;
- Identification and inclusion of current gang management practices into the Behavior Management Unit.

August 2006

- Identification of gang related issues and inclusion into Right Mission-Right Prison;
- Review existing gang related training programs and roll out Gang Suppression-Identification and Reporting to all line staff and academy classes;
- Develop specialized gang training needs for staff assigned to gang management positions (institutional gang investigators/SHU staff) and work with CDCR Training staff for the lesson plan development.

October 2006

- Develop Risks and Needs tool for gang related issues and coordinate with classification.

November 2006

- Develop enhanced disciplinary penalty matrix for gang related misconduct;
- Identify staffing resources necessary to implement gang management protocols and submit appropriate BCP.

December 2006

- Develop policy for behavior based property issues.

March 2007

- Evaluate all policies and regulations relative to the label based system compared to a behavior system.

April 2007

- Continue work on the evaluation of the behavior based system.

May 2007

- Develop plan for the completion of gang validations at the reception centers.

June 2007

- Complete Confidential Informant Policy for CDCR and Investigative protocol for the investigation of religious extremists.

The Department will implement an integrated program by means of developing a workgroup to address a comprehensive plan for inmate housing, classification, discipline and gang management. The workgroup will also identify the underlying causes of gang membership and activities that perpetuate the ongoing violence and victimization of institutional staff, inmates and the public at large. There is a direct correlation between gang violence in our institutions and gang violence in our communities. That correlation has been documented and proven in court on numerous occasions by federal prosecutions of gang members incarcerated in CDCR facilities. Based upon these successful prosecutions, the ultimate goal for the Department and the State of California is to take effective action to monitor and control inmate gang activities.

The CDCR has recently implemented the BMU, which is a program designed to target the inmates who are chronic program failures that continue to get involved in violence. This program was developed based on several evidenced based best practices programs being utilized in prisons across the country. Many of the inmates in the BMU are street gang members who have to earn their way back to a general population setting through good behavior.

21. ***What is your assessment of the current use of lockdowns? Inmates complain that too often, too many of them are locked down too long because of the violent behavior of a few. How do you balance this concern against the need for safety and security? How have lockdowns increased or decreased in the past year in number and or length? What is the longest lockdown currently employed and why? What specific practices will you employ regarding their use?***

At the present time, the CDCR utilizes the lockdown process as an effective tool to ensure inmate and staff safety in response to inmate behaviors/actions that threaten institution security. It is important to clarify that the terms "lockdown" and "modified program," which, have at times, been used inconsistently. These inconsistencies have created confusion regarding reporting requirements. Therefore, in an effort to ensure consistent state-wide reporting requirements, lockdown and modified program have been defined and both actions are required to be reported in the weekly Program Status Report. A lockdown is defined as the restriction of all inmates to their cells/dormitory beds encompassing no less than a facility. A modified program is defined as the suspension of any operation, procedure, service or function to prevent, contain, or control a disturbance. Normal program is defined as the ability of inmates to participate in all assignments and privileges according to departmental and institutional procedures governing those activities.

When a lockdown is necessitated due to inmate behavior, all efforts are made to return the institution/facility to normal or initiate modified programming as soon as practical and safe to do so. The CDCR is committed to providing inmates with the necessary tools and uninterrupted program access to facilitate the inmate's successful transition into society. In an attempt to reduce lockdowns and increase inmate access to programs, the CDCR is currently assessing the effectiveness of a pilot BMU.

The BMU is intended to reduce the need of instituting lockdowns or modified programming by providing alternate general population (GP) housing to inmates who refuse to program; who participate in criminal/gang activity; who refuse to participate in racial integration; who refuse to double cell; who have been found guilty of indecent exposure; and those released from Administrative Segregation/Security Housing Unit. This will allow GP inmates desiring to program without violence or disruptive conduct to do so unaffected by a smaller, more disruptive segment of the inmate population.

The BMU is currently being piloted at High Desert State Prison and will be expanding to six additional sites in the very near future. The BMU is an alternate GP program with program incentives. Once placed in the BMU, inmates lose significant privileges which must be earned back by positive programming, participating in selected self help programs, such as Breaking Barriers and Cage Your Rage, and submitting to mandatory drug testing.

The DAI will continue to take all necessary steps to ensure that staff and inmates work, live and program in a safe and secure environment and only initiate the lockdown/modified program process when absolutely necessary consistent with safety and security protocols. While safety of staff and inmates is the critical decision point, CDCR will also attempt to return all inmates who were not involved in and/or affected by the incident to normal programming as soon as practical and safe to do so.

It is the CDCR's intent and responsibility that all inmates and staff are provided a safe and secure environment and any actions initiated by the CDCR to lockdown an institution/facility or modify programming is with that sole purpose in mind. The CDCR does not, nor will not, condone/tolerate any unnecessary lockdowns or unwarranted delays to returning the institution/facility to normal programming. As such, the CDCR has a weekly "Program Status Report" that is generated to identify the number of lockdowns/modified programs, the reason for those actions, the length of those actions and the actions taken to return the institution/facility to normal programming. Each Associate Director of the Mission Based Regions is responsible to review, and asses these instances to ensure consistent application of policy and to ensure institutions return to full operation as expeditiously as possible.

Review of Program Status Reports for 2005 provides no discernable pattern of increase or decrease in either the number of lockdowns/modified programs or the length of lockdowns/modified programs on a month to month basis.

The longest current modified program involve Northern Hispanic inmates housed at the California State Prison, Solano, Facility I. The lockdown and subsequent modified programming was initiated on April 12, 2005 after information was received that the Northern Hispanics were planning on attacking White inmates on Facility I. Two incidents which occurred on April 6, 2005 and April 11, 2005 involving Northern Hispanics and White inmates preceded the April 12, 2005 action.

Numerous attempts to return Northern Hispanics to normal programming over the last year have been made to no avail. Modified programming such as controlled feeding, dayroom activities, telephone access, have been provided and subsequently suspended on numerous occasions due to additional information received and actions taken by the Northern Hispanic inmates. This includes actions such as weapon possession and information received that these inmates would attack other White inmates, attack other Northern Hispanic inmates and attack staff. Searches of the Facility, interviews of inmates and investigations continue in an effort to return the Northern Hispanic inmates to full normal program activities.

Although CDCR intends to continue utilizing lockdowns as needed, dependent upon safety and security needs, the CDCR will take all reasonable steps to minimize their use by initiating and implementing programs and strategies that have proven to be successful to reduce institution violence. Programs such as placement of non programming inmates in the BMU; correct identification of offenders with violence potential via the revised Classification Score system; and our continued efforts at combating the introduction of narcotics into our institutions are at the forefront of these efforts. However, when a lockdown is required, the CDCR will continue to strictly monitor the reasons for the lockdown via the Associate Directors of each Mission Based Region and will return the institution/facility to normal program as soon as it is safe to do so.

It is well recognized that gangs and violence are directly linked to drug trafficking within our institutions, thereby impacting orderly institution programming and creating lockdown situations. Gang activity undermines the safety and security of our institutions. In response to the ongoing need for effective Gang Management and reducing institution violence, policy regarding gang management has been revised and is now being placed in the non-restrictive Department Operation Manual (DOM) as well as in the California Code of Regulations (CCR), Title 15. This is intended to provide a more effective and efficient application of policy, thus enabling the CDCR to expedite removal of inmates who participate in gang activity

from the GP and reducing the need for resulting lockdowns based on their activities.

An additional practice that CDCR intends to continue is the active and ongoing assistance to the United States Attorney General in the indictment and prosecution of known prison gang members under The Federal Racketeer Influenced & Corrupt Organizations Act (RICO), Title 18, US Code Section 1961(4). Members of prison gangs such as the Nazi Low Riders, Aryan Brotherhood, (*US vs. Pendleton*, USDC ND CR-01-0319 SI), and the Nuestra Familia, (*US vs. Rubalcaba*, USDC ND, CR-00-0654 CRB) were indicted as being associated with a criminal enterprise as defined by the Federal RICO Act. The indictments charged inmates with numerous counts of violent crimes to include murder, attempted murder, assaults with deadly weapons, extortion, witness tampering and narcotic trafficking. Included was a direct link to numerous homicides committed inside prison walls, as well as several murders in the community. Through acts of violence, and narcotic trafficking, members and associates furthered the criminal enterprise and maintained control over the narcotic activity within the Adult Institutions.

In each of the above noted cases, narcotic distribution within the adult institutions and the communities played a significant role in the criminal activities of these adult prison based gangs. Most, if not all, of the defendants in the above noted RICO indictments have pled guilty to the charges as presented, and in one case the leaders of the prison gang have been sent to federal facilities throughout the United States.

By continuing the above noted programs, actions, and strategies and removing non-programming inmates and inmates who disrupt institution operations from those who wish to program, use of lockdowns should be reduced.

22. ***How has your office addressed the problem of inmate access to illegal substances or contraband, including cell phones? What specific steps have you taken to eliminate potential sources and what steps are you considering?***

The CDCR has taken, and is taking, a layered approach to drug interdiction and possession. Drug interdiction/reduction strategies include implementation of the inmate vendor package program, conducting random and mandatory urinalysis (UA) testing, enforcement of the disciplinary process relating to the use and possession of illegal drugs, suspending visiting privileges for both inmates and visitors (inclusive of permanent expulsion), visiting room surveillance cameras, and the inmate telephone monitoring system.

The field has been directed to continue their efforts to combat the introduction and use of narcotics by utilizing existing resources and protocols such as urinalysis testing of inmates for employment in critical jobs, after family visiting, as a result of disciplinary action, random testing of the inmate, and usage of existing visiting

restrictions placed upon visitors found to have attempted to introduce drugs into the institutions.

The CDCR is also working to address through legislation the ability to increase forfeiture of credit loss to inmates who have tested positive for marijuana or alcohol, or who have been found in possession of a cell phone. At present, the aforementioned activities are not crimes as specified in the California Penal Code (PC). As such, California PC Section 2932 limits credit forfeiture for such possession to a maximum of 30 days credit loss which does not dissuade inmates from these activities. This presents significant safety concerns as cell phones are used to continue illegal activity or potentially used as escape tools. The noted legislation would provide the Department the ability to assess credit loss based on the actual threat to institution safety and security.

If CDCR is to be successful in reducing violence within our institutions, we must address the core causes of prison violence such as gangs and drugs. There is a strong correlation between drugs, gangs and violence in prison. As prison gangs fight for control of the drug trade there is an increase in prison violence. If we control the interdiction of drugs into our institutions by utilizing and implementing the components of our drug reductions strategy, this will have a positive impact on the reduction of violence and lockdowns within CDCR.

As such, the CDCR will continue its support of the United States Attorney General in its efforts at indicting gang members associated with a criminal enterprise as defined by The Federal Racketeer Influenced & Corrupt Organizations Act (RICO), Title 18, US Code Section 1961(4) as described in the previous confirmation question (see question #21 for additional details).

The CDCR has recently completed full implementation of the inmate vendor package process which now limits receipt of inmate packages from only departmentally approved vendors. Over the last year, institutions have not received any inmate quarterly packages from the outside community that have contained illegal narcotics. This is a significant reduction over the last two years prior to the initiation of this program. Previously, the CDCR was finding significant amounts of drugs in these packages.

In addition, the CDCR is in the process of developing policies and procedures which will enable the CDCR, on a pilot basis, to conduct random visitor vehicle searches by trained staff and canines. It is anticipated that implementation of the canine program will have a significant impact on the introduction of illegal narcotics into our institutions. In addition, these canine teams will conduct routine searches of institution warehouses, housing units, and common areas that inmates may have access to. Other jurisdictions in the nation have done so and have experienced a significant drop in drug introduction. Furthermore, use of electronic drug detection equipment, visiting room camera systems, development of an

intelligence gathering database, drug information tip line, and mandatory random urinalysis testing for CDCR inmates has been established which has increased the CDCR's ability to interdict narcotics activities. It is widely known that once one avenue of drug introduction is closed, other methods are exploited by inmates and community conspirators. As such, the CDCR must review and eradicate all existing avenues, methods and options available to inmates and conspirators who will attempt to introduce drugs into the institutions.

The field has also been directed to establish more comprehensive coordination between institutional staff and local law enforcement agencies and local District Attorneys in our pursuit and prosecution of civilian offenders and parolees who conspire with inmates in introducing or attempting to introduce controlled substances into CDCR institutions.

We shall continue to review current substance abuse programs being provided at institutions and re-entry facilities to ensure that drug program services utilize a range of substance abuse treatment modalities with demonstrated outcomes, from drug education to intensive therapeutic community programs for substance abusing offenders.

Lastly, the CDCR has established a centralized tracking system specifically designed to track the discovery of cell phones within CDCR institutions. In addition, policy and procedures are currently being formulated/explored forbidding all cell phones within CDCR institutions. The policy and procedure will call for random gate checks in which supervisory staff will be responsible for checking all staff entering CDCR Institutions to ensure compliance, as well as to educate staff to the consequences of failing to adhere to the policy.

23. ***Due to the Pelican Bay Madrid court case, the department spent considerable time shaping detailed policy on when it is appropriate to employ reasonable force. Please describe briefly how this policy works compared to previous practices. Has the policy been implemented statewide? If not, what is current policy?***

The new policy is written into the CCR Title 15. Section 3268 (October 1999) and has been implemented statewide. The policy has its foundation in the California Statutes and relevant case decisions.

The policy defines:

Reasonable force - that which an objective trained correctional employee would consider to subdue an attacker, overcome resistance, effect custody, or gain compliance with a lawful order;
Unnecessary force – the use of force when none is necessary;
Excessive force – the use of more force than is reasonable to accomplish a lawful purpose.

The policy provides/defines the available force options when an employee is selecting a reasonable force option. It distinguishes between lethal and less lethal force.

In recognition of the sanctity of human life, the policy also delineates when deadly force will be used:

- Defend self or others from an immediate threat of death or Great bodily injury;
- Prevent an escape from custody
- Stop acts such as riots or arson, because of their magnitude are likely to result in escapes or death to others;
- Dispose of seriously injured or dangerous animals.

Previous practices did not include the penal code as a foundation, and due to the importance of this policy, training was implemented on an annual basis for all departmental staff. As with all policies, we are diligent in reviewing for improvements and are at this time looking to improve upon the current policy.

24. ***Racial segregation has continued in California prisons in an attempt to separate prison gangs and reduce violence. But last year the U.S. Supreme Court ruled that the state could segregate prisoners by race in rare instances. What steps have you taken to implement new procedures? What is your timetable and what pitfalls and benefits do you expect?***

The Fourteenth Amendment of the United States Constitution provides every individual the right to equal protection, including offenders in state prisons. The CDCR's unwritten policy of racially segregating prisoners in double-cells was challenged up to the United States Supreme Court. The Court ruled that the standard allowing agencies to segregate prisoners by race must be reviewed under the "strict scrutiny" standard rather then a "reasonably related to legitimate penological interest" standard. Application of this new standard required CDCR officials to ensure that our policy, adopted to prevent violence by racial gangs, was narrowly tailored to address necessities of prison security and discipline.

Last fall, we embarked on a strategy for in-cell integration of offenders within our adult institutions. CDCR executive level staff, field-operations representatives and I visited the Texas Department of Criminal Justice to study the success of integration within the Texas correctional system. While there, we examined their classification process and the process of administrative decisions in assigning offenders to integrated cells.

After looking at the success of other state prison systems, we developed a policy that states "All offender housing assignments shall be made on the basis of rational objective criteria taking into consideration each individual offender's safety,

security, treatment and rehabilitative needs. An offender's race will not be used as the sole determining factor when housing the offender population."

A workgroup consisting of headquarters and field operations staff identified the key components for the safe and efficient implementation of in-cell integration. To date, this group has:

- Drafted and reviewed educational materials for dissemination to staff and offenders;
- Provided information for the development of a statewide lesson plan for staff training;
- Drafted and reviewed new policy language and a Department Operations Manual article;
- Revised operational procedures on intake screening, housing, classification, and discipline.

Other accomplishments include:

- Creation of a timeline for the project;
- Identification of fiscal needs and preparation of required budget documents;
- Identification of system requirements for the modification of our existing information technology system;
- Evaluate needs for statistical data collection as part of our evidence based, crime prevention strategy;
- Provided training to Wardens;
- Drafted and distributed an informational memorandum on In-Cell Integration to all employees.

Tasks included on our timeline are:

- Modifications to the information technology system;
- Development and distribution of educational materials;
- Development of the official inmate notices;
- Preparation and submission of the budget documents;
- Development, review and approval of the policy, department operations manual article and operational procedures;
- Development of the lesson plan;
- Regulatory changes;
- Union notice and negotiations;
- Field training.

We expect to begin assigning an Integration Eligibility Code to every offender and begin inputting the information into our existing information technology system in January/February 2007. In February 2008, specific offender populations will begin

integration. In February 2009, we expect to implement housing protocols statewide for all male institutions.

Female institutions are currently in compliance with the settlement agreement and no changes will be required for this population. Other integrated areas within our institutions include dormitories, dining rooms, classrooms, work assignments, chapels, yards, visiting and specialized programs.

Pitfalls include:

- Establish alternative housing for non-compliant offenders;
- Contend with the attitudes, beliefs and any prejudices of the offender population;
- Apprehension and concern by staff and offenders for potential inter-racial violence within our institutions;
- Lack of understanding about the current level of integration within our institutions.

In-cell integration in other states has proven to assist in gang management, reduction of violence, increases housing options, reduces racial tension, promotes increased tolerance of others, breakdowns prejudicial barriers, perceptions and attitudes and reflects community norms.

Reception and Classification

25. ***There are currently 12 reception centers that house inmates when they arrive from county jails. Inmates often languish for months awaiting health, education, and violence assessment. What is the average length of stay in reception and what plans, if any, are there to reduce this amount of time? In your view, what alternatives to reception should we be examining? What functions should be performed appropriately by the state and which functions at the county level prior to arrival?***

The average length of stay in a Reception Center (RC) in the first quarter of 2006 is 81.7 days. This is based on a weighted average of the following types of cases:

Case Type	Average days in a RC
New Prison Commitments	79.2
Parole Violator with New Term	91.5
Parole Violator Returned to Custody	74.7

(Note: This is from date of Arrival to date of Transfer)

In November 2005, the Reception Center Mission within the DAI implemented a weekly collection of RC processing data. These weekly RC reports continue to be refined and are monitoring various inmate assessments and RC production processes. These reports have assisted in identifying areas of delay and improving production and are being incorporated into our COMPSTAT review process.

Data is maintained on the number of inmates processed or "endorsed" and ready for transfer. We have been able to identify the following group of inmates that are waiting in the RC for an extended period of time:

- Mental Health Inmates
 - Enhanced Out Patient Services (EOP)
 - Correctional Clinical Case Management Services (CCCMS)
 - Sensitive Need Yard (SNY) CCCMS
 - Psychiatric Services Unit
 - Crises Bed
- General Population
 - SNY Level II Inmates

The Department's Population Management Unit (DPMU) is working with the DCHCS and the Federal Court in the "Coleman" (Inmate Mental Health Services) Case to provide additional treatment programs in the GP Institutions. The DPMU has already identified additional Institutions for the housing needs of GP SNY Level II inmates. Recent changes to the Coleman Program Guides are anticipated to alleviate some of the waiting lists for CCCMS placements.

The Reception Center Mission has initiated formal Operational Reviews of RC inefficiencies. These audits identify deficiencies to be corrected and improve processing.

We have established the following projects to reduce processing time:

- Automated Medical Chrono Archive System
 - Development of a computerized archive system for medical chronos so as to make them accessible to classification staff. This would result in more efficient RC processing and remove the frequent "bottleneck." It will also reduce the amount of time it takes to process inmates through the RC, as well as reduce lost or misplaced medical and psychiatric chronos.

- Senate Bill 618 Program
 - Senate Bill 618 has provided the Department with a clear path for the CDCR and local agencies to collaborate on working together to reduce duplicated services and to improve outcomes. The SB 618

"kickoff" meeting was held on November 9, 2005, in San Diego. Representatives from San Diego District Attorney's Office, Sheriff's office, Probation, Public Defender, and the Courts, met with CDCR staff (Agency, RJD, Paroles, OSAP) and local providers of service in San Diego, to establish an initial framework for the multiagency plan. There were eight work groups established at the meeting to develop the details of the plan. The County and CDCR is charged with, among other things, identifying current services available in the institutions to support inmates from San Diego while they are in prison. In addition, proposed services will be identified and recommended where applicable.

- More specifically, Senate Bill 618 provides for up to three Probation Departments to take the lead in assessing inmates (Participants) prior to sentencing by the Court. County or County contract providers will conduct all assessments currently required by CDCR and Court mandates. Those assessments, along with County discretionary vocational and substance abuse assessments, will be completed within 28 days, while the inmate resides at the County jail awaiting sentencing.

- In addition, the Probation Department will develop a "Life Plan" that establishes a plan for offenders, requiring participation and conditions that start in the County Jail and follow through prison, parole/release and discharge. This Life Plan will document goals and tasks for each Participant to be performed in prison and on parole. Upon sentencing the inmates will be transferred within 72 hours to a State prison and placed in a General Population bed, thus avoiding the need to place Participants in Reception Center beds.

 - The only remaining Reception Center function to be performed by CDCR in this pilot program is the classification process. Correctional Counselors will classify inmates while they are residing in the Jail, thus ensuring that participants are moved directly into a General Population program. This will dramatically reduce "down time" for the Participants and allow them to move more quickly into prison programs geared toward the participants' successful re-entry to the community.

- Reception Center Efficiencies Work Group
 - Evaluate and research RC processes in order to provide recommendations for changes in current practice. Identify steps that would result in more efficient RC processing.

- County Jail Expectation Work Group
 - Research state and federal laws applicable to county jails and their responsibilities relative to the delivery of offenders to CDCR. Standardize the delivery of offenders from county jails so as to eliminate duplicate and/or un-necessary processes (DNA collection, medical, etc.) Develop local operating procedures on bus intake with county jails.

As for my recommendations, I would advocate for a system where parole violators who have committed technical violations of their parole conditions are returned to community "re-entry centers." Under this concept, local law enforcement, parole staff, community organizations and others would provide services to the parolee that are directly responsive to the issues that led to the parolee's failure on supervision. These centers could also serve as a community based center for other offenders who are nearing release from the institutions and would focus on establishing a realistic plan for each and every offender released from custody with the basics for parole success – basics such as a place to live, a job and the resources to successfully avoid alcoholism, drug addiction and gang activity. We release approximately 120,000 inmates into the community each year and we need to do a better job engaging the offender into this process as well as the local law enforcement, community-based and faith-based organizations into the solution.

26. ***U.C. Irvine researcher Joan Petersilia, who has been a department consultant, says that in about 25 percent of housing assignments, security classifications are ignored and inmates are moved to higher security facilities than warranted, resulting in higher costs to taxpayers. Do you agree? How do you measure the accuracy of your classification practices?***

While I have not completed the same analysis that Professor Petersilia completed, I can tell you that our Right Prison-Right Mission Work Group identified approximately 5,000 Level II inmates housed in Level III beds during their initial work last summer. From that perspective, I would have to agree that we have housed inmates in higher level beds than required by security protocols based on the pressing overcrowding that exists within the institutions. Steps were taken to rectify this by moving offenders into lower level beds when they became available, but our population continues to require the use of every available bed in every institution.

The classification system has two fundamental components. The first component is the Placement Score (PS). The PS predicts an inmate's potential for misbehavior inside a facility. The higher an inmate's PS, the greater the potential for misbehavior. The second component is an inmate's custody level. The custody level predicts an inmate's potential for escape from custody.

Data was collected on April 16, 2006, and May 14, 2006, in the Inmate Classification Score System (ICSS) and reflects that nearly 85 percent of the inmate population is housed in a facility with a security level either *at* or *below* their calculated PS. This does not include inmates housed in RCs, Segregated Housing Units, or Contract facilities.

Using this data, only seven percent were housed in a facility with a security level *higher* than their calculated PS with an endorsed override. In most cases, the placement in a higher security level can be directly linked to an inmate's custody level based on his escape potential. The remaining percentages are likely cases in various stages of being reviewed or transferred to an appropriate level institution. The Department consistently reviews and adjusts inmates to lower levels.

The accuracy of the classification practices can be measured by years of comprehensive research. The present system was developed by the California Department of Corrections in the early 1980's and several studies have validated that the system functions well by sorting inmates appropriately.

In 1998, the CDC contracted with Richard Berk, Ph.D., Statistical Consulting Center, University of California, Los Angeles (UCLA), to assess the validity of the system. Dr. Berk's findings indicated that the classification system appropriately sorts inmates by their propensity for misbehavior.

The Department is committed to on-going review and validation of the classification system by an external entity to ensure accuracy of the system. In the past, the classification system focused on predictors such as marriage or military experience. However, as the inmate demographics change the system must respond. The system now focuses on factors such as the age of the offender, age at first arrest, and gang activity.

27. ***What is the status of the gender responsive strategies for female inmates? Several years ago many female inmates lost privileges because of changes in custody practices that were aimed at male inmates but affected all inmates. How is custody for female inmates expected to change and what is your timetable for implementing change?***

The Department has aggressively established an evidence-based foundation for improved female offender programming and outcomes based on empirical data, and best practices in the field of women's incarceration. Achievements to date include:

- Establishment of the Gender-Responsive Strategies Commission (GRSC) as an Advisory Committee to assess and make recommendations on proposed strategies, policies and plans specific to women offenders. These gender-responsive strategies will emphasize the implementation of

evidence-based policies, programs and procedures that foster personal growth accountability, self-reliance, education, life skills, workplace skills, and the maintenance of family and community relationships to lead to successful societal reintegration.

The Commission is comprised of representatives of community, state, local, legislative, and labor organizations; ex-felons; staff representing the various disciplines within the Department and nationally recognized researchers in the field of female incarceration.

- DAI has reorganized in to a mission-based structure with consolidation of all female institutions, civil addicts, women and children programs, camps and female Community Correctional Facilities, under one Associate Director. This reorganization provides focused leadership to evaluate and incorporate gender-appropriate concepts into its women offender operations and programs.

- Wendy Still was appointed as Associate Director Female Programs on April 3, 2006.

- Adopted the recommendations of the Little Hoover Commission (LHC), SR 33, AB 900, and the guiding principles contained in the NIC report prepared by Bloom, Owen and Covington and published by the NIC.

- Developed strategies specific to female offenders that have been incorporated in the CDCR Strategic Plan Goal 5.3.6. These strategies are based both on the data profile of women offenders and a vision for reducing recidivism by targeting women's pathways to prison.

- Established mechanisms to capture previously-unavailable statistics relative to the female offender population, e.g., number of female offenders eligible for Community Correctional Facility placement that is crucial to the implementation of housing and classification goals.

- Contracted with Barbara Bloom, Ph.D., and Barbara Owen, Ph.D., nationally recognized experts, to collaborate with the Department and the Commission to design correctional policies, programs and housing strategies that reflect gender distinctions and address women's issues while maintaining safety and security.

- Delivered training to Wardens and institutional executive leadership relative to the management of female offenders. Staff attended training provided by the NIC including Executive Leadership for Women, Developing and Agency wide Approach to Women Offenders and Operational Practice in Women's Prisons.

- CDCR Executive Staff from Adult Operations and Juvenile Justice attended the NIC training "Clearing a Path for Girls and Women-A Call to Action" in Bloomington Minnesota on October 15-18, 2005.

- NIC provided executive-level training on gender responsive operational policy and practices on January 10-11. The training was taught by national experts in the field of female incarceration. This training was provided to multi-divisional executive level staff that impacts the development of female offender policies.

- Revision of regulations to establish evidence-based, gender-appropriate pat search practices (eliminated body searches of clothed female inmates by male staff). This was based on studies conducted by the Bureau of Justice which found that more than 57 percent of incarcerated women have been sexually or physically abused at some time in their lives, and on case law that established that body searches of previously-victimized female offenders by male staff contribute to re-traumatization.

- Developed a phased housing plan to shift 4,500 Level I and II Female offenders to community-based, smaller facilities. This will be complimented by provision of "wrap around" services including pre-release planning, gender-specific health care, education, vocation and work programs, family reunification and parenting, as well as substance abuse and trauma treatment.

- Submitted and received funding approval from the Administration for the Female Offender Reform Program Budget Change Proposal for Fiscal Year 2006/07 which is pending legislative review and approval. This funding request includes resources to establish for use with female offenders: a gender responsive classification system; a risk management tool; a case management tool; training for staff working with female offenders; a mediated family visiting program and in prison baby nursery at the CIW; add 60 community beds and a complete drug treatment program at the Leo Chesney Community Correctional Facility; resources to complete a staffing analysis for female institutions; funding to create a Psychiatric Services Unit at CIW; funding to complete a comprehensive gender responsive review of the departmental drug treatment, educational and peace officer training programs.

The Governor's proposed budget for FY 2006/07, which is currently being considered by the Legislature, includes funding to conduct a classification system review for female offenders. The review will provide the information necessary to make changes to the current departmental non-gendered classification system. It is anticipated that the review will be conducted in Summer 2006, and the report

with recommendations will be completed in Fall 2006. The Department will then proceed with making changes to the existing classification system to ensure that it is gender responsive and that women offenders will be appropriately programmed and housed based on their unique needs. It is anticipated that the study will be completed and the changes made in 2007. Additionally, some changes have already occurred related to housing and custody such as the creation of the honor dorm at VSPW. The next anticipated step will be the separation of female offenders at VSPW and CCWF by behavior with consideration for commitment offenses. CDCR will begin this process in Summer 2006.

Inmate Activity

28. ***How has population increase affected yard time, access to telephones, and visiting time? Approximately how much yard time do you expect an inmate to receive on a daily or weekly basis? How do you monitor whether it occurs? How do you monitor the number of visits terminated each weekend due to overcrowding in visiting rooms?***

As noted above, the level of population overcrowding has dramatically impacted CDCR's ability to implement inmate programming, including recreational activities. Violence within our prisons remains a constant deterrent to providing optimal out of cell activities. In an ideal setting, my expectation is that access to program, including yard, education, self help, visiting, and other services would be limited only by the resources and security requirements of the institution. In reality, yard, telephone and visiting programs have been adversely impacted by the increasing population. As the Director, I am provided with information regarding the impact of these programs when program closures exceed 24 hours. Direct oversight is performed by the Associate(s) and Deputy Director. I have managed these functions by ensuring that all staff, including the Warden's, understand the critical importance of these types of programs for the safe operation of the prisons and ultimately the rehabilitation of the inmate. I understand that yard, telephones, and visiting, not to mention education, self help, and other employment and out of cell opportunities, represent a critical component to a safe prison for staff, inmates and the public.

The reorganization to mission based operations was intended to provide enhanced headquarters oversight to prison operations. I expect the mission based Associate Directors to provide daily monitoring of inmate yard activities, telephone access, and visiting operations (including terminations), and the full spectrum of daily operations and to advise me when disruptions to these programs occur.

Institutions are required to provide weekly reports on the number of visitors terminated due to overcrowding. Each mission has a staff member assigned the responsibility of evaluating and monitoring visitor termination information received

from the mission based institutions This information is reported to headquarters by COB every Tuesday. Mission staff review the report and, utilizing this information, document any unusual situations on their monthly reports. Quarterly and annual summaries are provided to the Associate Directors for their information and action if appropriate.

Their timely response is monitored by the Deputy Director who reports directly to me. The 2005 annual report was one of the tools utilized to determine the institutions which would be identified as the pilots for the additional day of visiting. Due to the volume of visits which now occur as a result of the overcrowding and the elimination of visiting days the department is currently seeking funding to reestablish a third day of visiting. At my direction a visiting task force has been established which is comprised of three Wardens, other CDCR Administrators, and several members of the Inmate Family Council, to address all of the departmental issues related to visiting. This taskforce meets every 60 days. Additionally, the IFC, which meets every quarter, is a catalyst for information regarding visiting issues and concerns.

As stated previously, CDCR is implementing the COMPSTAT process that provides a level of detail and performance measurements that were not previously available. The statistical data received from this process permits cycled (about every 8 weeks) face to face meeting with Wardens to address these and many other critical operational issues. I am confident that this process will permit further oversight and monitoring and lead to increased accountability throughout the system.

Prison operations must remain flexible enough to address tangible threats to the safety and security and be able to articulate that threat when prison operations are impacted. The Wardens' ability to suspend prison operations temporarily is critical to prison operations. If confirmed, I will continue to emphasize the listed and unlisted inmate programming activities for maximum operation. I will ensure that all staff in the organization understand the benefit and priority to ensure maximum participation and minimum disruption to these critical programs.

29. ***What evaluation is taking place, if any, regarding the appropriate role of visits, family conjugal visits, and other methods of keeping an inmate in contact with family?***

The CDCR has compiled statistics, from January 2005 to date, related to the number of family visits and number of terminated visits in order to assess the impact of the loss of the third day of visiting. These statistics were compiled to provide the data necessary for the Department to develop a budget request to reinstate a third day of visiting. CDCR requested, and the proposed FY 2006/07 budget includes, funding for three prisons to reinstate the third day of visiting. The three prisons were identified working with the Statewide Family Council and

are those prisons with the highest identified need based upon the number of visit terminations and visitor volume. The new Secretary (A) has also committed to identify funding to increase the number of prisons to ten.

The CDCR encourages inmates to develop, and maintain, health family and community relationships. We recognize visiting is an important component in maintaining relationships with family members and in the re-unification process. Visiting provides an opportunity for the inmates to maintain contact with their family and thus face fewer adjustment problems when released into the community. CDCR provides several opportunities for this to occur through contact and non-contact visits, and conjugal visits. We monitor the visiting program, documenting the number of visitors, the frequency, length and number of visits. If on a particular day, visiting is especially high, visits may be terminated to allow all visitors the opportunity to utilize the visiting facilities.

Visiting environments are being updated to create an atmosphere that is family friendly in an effort to improve the visiting experience and re-unification process. The Department is in the process of piloting several new programs in an effort to improve the quality of visiting and the accessibility to family members. These programs include:

There are inmates who do not receive visits. To address this need the **Offender Mentoring Program** was developed. The Offender Mentoring Program is a mentorship program designed to establish a one on one relationship between an inmate and an outside mentor who will assist the inmate to begin changing learned institutional behavior while they are still behind bars. Funding for this program was eliminated in a prior budget reduction. The proposed FY 2006/07 budget includes $60,000 to partially reinstate this program to assist those offenders who do not have family visits.

The Center for Children of Incarcerated Parents and the CDCR are working together towards the improvement of the health and well-being of the children and families of parents incarcerated, by increasing the frequency and quality of parent-child visits, enhancing prisoner-child-caregiver relationships, increasing the rate of parent-child reunification following parental incarceration, and decreasing the rate of early recidivism among formerly incarcerated parents. This will be accomplished by establishing a three-year pilot **Mother-Child Reunification Project**. This will begin in fiscal year 2006/07, at the California Institution for Women (CIW).

CIW is also implementing a unique **Bonding Mothers with Babies program**, an in-prison 20 bed nursery, which will allow incarcerated pregnant mothers, meeting the eligibility requirements, to bond and care for their child beginning at birth for up to 18 months. This program will provide educational, health, therapeutic and support services with linkages to health care within the prison setting.

The Department's goal is to build and strengthen systems of family support, involvement, and re-unification that will assist in establishing strong family ties, and assist the offender with successful re-integration into society.

30. ***How often do you meet with the families of inmates who sit on the Family Council? How often do you expect wardens to meet with Men's or Women's Advisory Councils who are the elected representatives of inmates at each prison site? How do you monitor whether this occurs?***

I have continued to meet with members of the Statewide Inmate Family Council on a quarterly basis. In the institutions, most of the Wardens meet with the Inmate Family Council every other month and I often get a sense of those Family Councils that are more active than others. I also correspond with numerous institution IFC members around the State, which is another way to stay informed.

It is my expectation that Wardens will personally meet with the inmate advisory committee on a monthly basis. Although this expectation is not new, a recent survey revealed a variety of responses. Until very recently, 23 out of the 33 Wardens were "acting" wardens. The Secretary has made a commitment to fill all of our critical vacancies and I anticipate more consistent leadership in the near future. In the interim, I have directed the Associate Directors to ensure these meetings are occurring on a regular basis.

31. ***How do you personally monitor inmate appeals, which constitute the in-custody inmate complaint system?***

I view appeals as windows on the institutions that allow inmates to have unfettered access to staff with oversight of the institutions, and to convey critical information related to their incarceration experience. To ensure that this information is widely disseminated and that appropriate action is taken to address the issues raised, I have also instituted a number of accountability practices which include:

- Direct line of communication between the Chief, Inmate Appeals Branch (IAB), and myself;
- Chief's inclusion and active participation in Executive staff meetings;
- Establishment of standing monthly Chief's Meeting with Associate Directors (who have functional responsibility for the Wardens);
- Submission of appeals data for consideration and analysis in Strategic Management (COMPSTAT) Process;
- Enhancement of Inmate Appeals Tracking System (IATS) for field, and repositioning of IAB IATS enhancement status to "high priority" after noting some delays;
- Linkage of Appeals Offices in the field to CDCR's network, thereby delivering intranet and internet access to coordinators, facilitating immediate

access to subject matter experts, departmental policies/procedures and research information;

- Set, and reinforce regularly, expectations regarding appeals process to Wardens and Executive staff. Ensures institutional sign-off of appeal response is not delegated below level of Chief Deputy Warden;
- Sanctions (submittal of Corrective Action Plan) for overdue appeals and Modification Orders, resulting in significantly improved compliance;
- Welcomes communication with external stakeholders such as: Prison Law Office and Office of the Inspector General for real time feedback regarding appeal responsiveness and efficiency and correction of identified deficiencies;
- Provides fiscal support and resources for management of IAB workload, taking care to avoid appeal backlog and to remain in compliance with mandated time constraints.

I also review statistical information that the Appeals Branch provides to the Associate Directors which reflects overdue appeal data, Modification Order compliance, screen-out statistics, group appeal statistics, and significant appeal data as it relates to Third Level. I have also requested a statistical comparison of this year's appeal data from last year's. In addition, I receive and review on a monthly basis, detailed medical appeal data through the Inmate Medical Appeals Tracking Program (IMATP), regarding medical, mental health, dental, and American's with Disability Act (ADA) issues.

During my tenure, I have made it known that I value the inmate appeals process and have taken steps to ensure that the voice of the inmate is heard at the highest levels of our organization. This is fundamental to the success of our operations, as their concerns provide insight into the relative health and wellbeing of our prisons, allowing for the establishment of best practices and a more productive, supportive and above all, safe environment.

32. ***As the number of life term inmates increases, what is your policy regarding work for geriatric inmates? Does CDCR have a policy regarding when men and women are too old to be expected to work?***

As of June 30, 2005, 10.6 percent of all male inmates and nine percent of all female inmates in CDCR institutions were age 50 and older, a total of 18,106 inmates. Administrators at the DCHCS anticipate that inmates at age 50 or older will comprise a growing proportion of the inmate population in coming years, reflecting the same baby-boom demographics that affect the general population, compounded by crime and sentencing trends that provide for longer sentences. Nationally, the number of elderly inmates in state and federal prison systems has increased dramatically in recent years, commensurate with the overall increase in prison populations. A report from the NIC at the United States Department of

Justice indicates that the state and federal prison population at age 50 or older increased 172.6 percent from 1992 to 2001.

Although the California Code of Regulations, Title 15, provides authority in cases where the health condition necessitates that the inmate becomes "medically" unassigned for 30 calendar days or more, it also dictates that the physician shall specify an anticipated date the inmate may return to work, and a classification committee shall review the inmate's medical or psychiatric unassigned status and appropriately change the inmate's Work Group. Further, an inmate diagnosed by a physician and/or a psychiatrist as partially or totally disabled shall continue to receive full credit earning status unless changed by disciplinary action.

With that said, the CDCR does not have a "policy" per se, regarding inmates retiring when they get "too old to work." As a Warden, however, I have exercised my discretion to un-assign an offender from their work assignments when it was in the best interest to do so or to modify assignments to match the offender's ability with the needs of the institution. Clearly this is going to be an issue we must face as the demographics of our population continues to change and I am open for further discussion and ideas as we move forward.

May 10, 2006

Senate Rules Committee Confirmation Questions
from Dean Johnston

Goals

1. **Please provide a brief statement of goals you hope to accomplish while serving on the CSAC.**

 There has been a strained relationship between the Commission and EDFUND for some time. A lack of clear roles and responsibilities for both organizations has contributed to this problem. We must establish a better balance between Commission oversight and the need for EDFUND to operate the business without intrusive micromanagement. This challenge is made more difficult by two different cultures – EDFUND's entrepreneurial culture and the Commission's state civil service perspective. My first goal would be to establish well defined roles and responsibilities which better balance both Commission oversight and the realities of EDFUND operating in a highly competitive environment.

 Another important goal is to update the grant delivery system which currently is not compatible with new methods of electronic delivery. I would like to see more staff time spent on customer compliance and less time on delivery of grant aid. This can be accomplished by working directly with our college partners moving delivery to a real time electronic process.

Organizational Relationship between the California Student Aid Commission and EDFUND

2. **Do you concur that there is a problem? What is your view of the specific issues raised by the LAO? Does the problem impede the ability of both agencies to serve students effectively?**

 Yes, there is a problem. I believe, the report was and excellent discussion of the issues. I agree with the reports assessment of the problems.

 Having separate bodies has led to tension among organizational leadership. Clearly defined roles and responsibilities will provide structure to solve this problem.

 I agree that state law has not adequately delineated which agency is responsible for which operational function. However, I believe it is the commission's responsibility to exercise governance over this issue. To date we have not provided that leadership.

 I agree the agencies have conflicting incentive structures. Proper roles and responsibilities will enable the commission to set management policy to ensure these differences work as an asset for effective oversight and operational excellence.

 In my opinion, we have more customer service issues with our grant program than we do with our loan program. With all the internal issues outlined in the LAO report, EDFUND continues to provide outstanding customer service.

3. **As the state grapples with the future of EDFUND, What issues should be considered? Are there issues that are outside the state's control that may impinge on EDFUND's future? What are the current trends, opportunities, and threats in the student loan industry that require state consideration as decisions are made about EDFUND's future?**

 The primary issue to be considered is how to preserve EDFUND's competitiveness in the marketplace. Yes, there are issues outside the state's control that will affect EDFUND future. This is a federal program and any change in the law can and will affect EDFUND. Current trends indicate increased competitive pressure for market share. EDFUND's staff has been outstanding in providing excellent customer service enabling the organization to withstand these competitive pressures. EDFUND's biggest threat is CSAC lack of clear guidance in the roles and responsibilities. A tremendous amount of human capital resources in both organizations have been spent on internal disagreement and related outside reviews. The responsibility for this dysfunction is the commissions. I'm confident the current commission can resolve these internal problems.

4. **Current law specifies that CSAC has overall authority for EDFUND. However through a mutually agreed upon operational agreement established between the two agencies, EDFUND was granted significant authority and autonomy to set priorities and manage its day-to-day operations. This bifurcated line of authority has given rise to numerous conflicts. How would you propose addressing the issue of who is in charge? Should the solution be addressed in statute?**

 EDFUND's Board should be responsible for operating the loan program. Oversight responsibilities must be more clearly defined in the operating agreement. Roles and responsibilities can and should be a commission governance policy issue. I do not believe additional legislation is needed. We must not look to the legislature to resolve our problems. Leadership requires making the difficult decisions and not passing responsibilities on to others. We have failed to act decisively on this issue.

5. **CSAC and EDFUND have had major differences over who should have final authority for the EDFUND's budget. What is your view on this issue and how should this matter be resolved.**

 Final authority over the EDFUND budget should be and currently is a commission responsibility. We take this responsibility seriously.

6. **In spring 2005 CSAC voted to dismantle the EDFUND board. CSAC argued that the action would better align the goals and priorities of the two governing boards. What impact has this action had on the rest of EDFUND's operations? What criteria does CSAC use to make new board members appointments?**

 These actions occurred before I joined the commission. It is clear that the CSAC action created considerable alarm in the financial aid community and concerns that EDFUND's ability to continue offering high quality service would be undermined. This contributed to competitors stepping up their efforts to attract EDFUND customers with limited success. In addition this action led to the General Counsel, CFO and former President's resignation and concern among EDFUND staff. With the immediate appointment of a new President, EDFUND remained focused with no adverse affects to the level of service. I'm pleased with the EdFund's current leadership.

A Committee, through the Deputy Director, solicits CSAC PEN Committe nominations from any number of organizations. Commissioners and anyone in the state can nominate people or invite them to apply, including the statutory student member of the EdFund Board. It's a public process. For the statutory employee member, EdFund employees nominate people, several candidates are chosen, and CSAC PEN Committee members interview them. CSAC PEN Committee reviews the nominations and nominees are then interviewed by at least two Commissioners on the CSAC PEN Committee for recommendation to the Commission for service on the EdFund Board.

EDFUND Surplus Funds

7. What is a good use of surplus funds? Should funds be used to serve student financial needs? If not, please explain the other uses for these funds?

All of the revenues generated by EDFUND in operating the federal student loan program for CSAC come from non-general fund sources. The primary use of those funds is to make sure that EDFUND/CSAC can provide and make the necessary investments to offer a high quality, competitive student loan program for the benefit of borrowers and institutions. It is also essential that there be sufficient reserves in the Operating Fund to meet the cash flow requirements and obligations of the loan program. Once those levels are assured, federal statute permits expenditure of loan funds for outreach and other financial aid activities as selected by the guarantor.

Controversy over Community College Transfer Entitlement Grants

8. As a board member, when were you informed of this matter? What was the board's role in addressing it?

I learned about the problem after the November Committee meeting in late November or early December 2005.

9. Once CSAC discovered the discrepancy in awarding Cal Grants to students who may not have met the California residency requirements, why did it take so ling to notify the legislature and seek a statutory remedy for this problem?

I do not know

10. Has CSAC implemented new policies to verify California residency at the time of high school graduation for future Cal Grant recipients? Will these changes go into effect in time for student's applying for Cal Grants this year?

Yes, CSAC staff informed the Commission they have developed a process that includes documentation of a student's state residency at the time of high school graduation. Yes, this new process will be in place for the 2006/07 award cycle. The Commission has scheduled internal audit review of this process.

Future of State Financial Aid Programs

11. As a CSAC commissioner, what specific policy recommendations, if any, do you have for making improvements to the Cal Grant A and B Programs to more effectively serve California students?

Fund the tuition component of Cal B in the first year of the award. Student retention is increased with the availability of financial aid and the current policy of only funding the access grant in the first year of the award creates a financial obstacle for our most at-risk-students in the state and is not a good public policy. Set a formula for funding the Cal Grant A and B tuition amount and fully fund it each year.

12. What CSAC-sponsored outreach activities do you believe are most effective in advising prospective college students about Cal Grant and other financial aid funds available to low and moderate-income students? How does CSAC measure the effectiveness of its different outreach activities? How do CSAC outreach activities that serve high school students interact with other university-sponsored outreach programs serving the same students?

I believe Cal-SOAP is the most effective but more accountability needs to be added. Measuring the effectiveness of outreach has been a challenge and must be improved. In many Cal-SOAP consortiums the university outreach is coordinated with university-sponsored programs but not all. I would like to have an outside consultant review and make recommendations for improvements in all our outreach activities.

13. The Cal Grant C program, which provides a $576 award to students pursuing vocational education, has received little attention and no new funding in several years. With all the discussion about the need to retool and support quality career technical education, what could be done to reform the Cal Grant C program to make people more aware of the program and to make it more relevant to the needs of the students?

Cal Grant C should increase the tuition component to the amount of the Cal Grant A tuition amount.

CALIFORNIA LEGISLATURE

MEMBERS
JIM BATTIN
VICE-CHAIR
ROY ASHBURN
DEBRA BOWEN
GILBERT CEDILLO



GREGORY SCHMIDT
SECRETARY OF THE SENATE
NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

May 18, 2006

Carol O. Biondi

Dear Ms. Biondi:

As you know, your appointment as a member of the Corrections Standards Authority (CSA) is subject to confirmation by the Senate. We have prepared the following questions to which we would appreciate your written responses. We request that you provide us with your responses by June 2nd. My staff will contact you to schedule an interview to take place at a time convenient for you in early June.

Mission

The CSA was known formerly as the Board of Corrections. It has had long-standing responsibility for setting standards and conducting inspections at local jails and juvenile halls, regulating the selection and training of local correctional staff, and administering a variety of federal and state grants to local correctional facilities. As part of the governor's corrections' reorganization, on July 1, 2005, the board became the Corrections Standards Authority. Section 6030 of the Penal Code now gives the CSA added authority for setting minimum standards at state correctional facilities and sets a deadline of January 1, 2007, for this activity. CSA also assumed the additional mission of the Commission on Correctional Peace Officers' Standards and Training to improve the professionalism of correctional staff in state institutions.

1. *Please provide a brief statement of your goals. What do you hope to accomplish during your term on the Corrections Standards Authority?*

2. *Given that this has been a year of transition for the authority, what are the most important challenges facing the board? What are the most important issues that the CSA should be discussing and acting upon?*

3. *How have you prepared for these new responsibilities? How does the staff assist you in carrying them out? Do you believe you get the help you need or is there additional assistance that should be made available?*

4. *The CSA consists of 19 members, 14 of whom are appointed by the governor. Largely due to a lack of a quorum, the board has met only once in the past year although the Web site states it meets bimonthly. A meeting scheduled this month was cancelled due to a limited agenda, though three other meetings are planned for later this year. In the absence of meetings, how have you communicated with staff and kept informed of the board's work? How does the board determine when to meet?*

Local Facility Responsibility

5. *How often does a county jail or juvenile hall get inspected by your staff? Are you able to visit facilities and familiarize yourself with conditions? If so, what have you learned? If not, how do you familiarize yourself with the issues?*

6. *Do you believe the CSA has sufficient authority to ensure that needed changes are made after inspection? Do you believe you need additional enforcement tools?*

7. *In a taxpayer lawsuit filed in April 2006, the Prison Law Office states that, "The CSA has abdicated its oversight duties and allowed counties to operate juvenile detention facilities that violate state law." It alleges that the authority fails to be tough on counties that repeatedly violate the law. The suit alleges that the authority fails to disclose violations to counties, require plans to fix the problems, and identify facilities that are "unsuitable for the confinement of minors."*

 Please describe what steps the CSA plans to take to respond to the lawsuit.

8. *CSA is responsible for ensuring the education of minors in county juvenile lock-ups and the compliance of local officials with state regulations. First, a 1998 regulation required dedicated classroom space that was limited to 20 minors per class, according to an authority deputy director. However, existing dayrooms that were used for classes were "grandfathered" under CYA regulations. As part of their inspections, authority officials also are supposed to determine if minors are enrolled in classes within three days of admission, check for minors who are kept out of class for disciplinary reasons, or ensure there are enough teachers.*

What role should the board play in ensuring better educational opportunities for the incarcerated? If you find that a county is not meeting its obligation to provide adequate room for education classes, what steps should the authority board take?

State Facility Responsibility

9. *Sec. 6030 of the Penal Code requires the CSA to set minimum standards for state and local correctional facilities by January 1, 2007. Is the CSA on schedule to meet this deadline? What is the status of your work on these standards?*

10. *At the May 2005 meeting of the Board of Corrections, a request was made to establish a panel to examine staff safety issues at state prisons and juvenile detention facilities. The reviews of four juvenile facilities have been posted on the Division of Juvenile Justice Web site. Have you done any follow up to determine if your recommendations have been implemented? Have you finished reviewing any adult facilities? When will those findings be made public?*

Grant Administration

11. *The authority administers various grant programs. In the coming fiscal year it proposes to oversee $35.9 million in federal grant programs. Also, the governor in his May budget revision proposed $50 million in grants to curb recidivism among mentally ill offenders. What role does the board play in determining where grant funds are spent? What oversight role do board members play to ensure that these funds are spent appropriately?*

12. *CSA administers the federal Juvenile Accountability Block Grants. Historically, these awards have been made to local jurisdictions which, as you know, handle all but a very small percentage of juvenile offenders. This year, a decision was made to award $7 million in JABG funding to the Division of Juvenile Justice. Please describe in detail the basis for the board's action awarding this funding to DJJ instead of to local grantees. In addition, please describe how the JABG grant award to DJJ will fit into the Program Purpose Areas within the JBAG program and, specifically, which purpose areas were chosen by DJJ as a grantee. Finally, please attach a copy of the successful DJJ application for JABG funding to your responses to this letter.*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814. You may fax them to 916 445-0596 or email them to nettie.sabelhaus@sen.ca.gov. Thank you very much for your help. I look forwarding to discussing these important issues with you.

Sincerely,

DON PERATA

DP:MG:dc

cc: Corrections Standards Authority

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May 30, 2006

Ms. Nettie Sabelhaus
Rules Committee Appointments Director
State Capitol Room 420
Sacramento, CA. 95814

SENT VIA FEDERAL EXPRESS

Dear Ms. Sabelhaus:

Attached please find my answers to the questions sent to me by Senator Don Perata regarding my appointment to The Corrections Standards Authority. I found the questions extremely informative.

I have also included the following attachments for questions 10 and 12:

- Staff Safety audits
- Jan 3, 2006 Memo to Rod Hickman – Review of Staff safety Evaluation Corrective Action Plans
- March 16, 2006 Memo to Chairperson and Members – Juvenile Accountability Block Grants (JABG) Distribution of Funda To Division of Juvenile Justice
- March 1, 2006 Memo to Jerry Read – Federal Funding JABG Information and Explanation
- OJJDP Juvenile Accountability Block Grants Program – Program Purpose areas.

Please contact me if you have any questions.

Sincerely,

Carol Biondi

Carol Biondi

CB:cp

Enclosures

MAY 31

1) My goal as a member of the CSA is first, to support in any way I can Governor Schwarzenegger's initiative to reform the Juvenile Justice System in California at the State and Local Levels. In order to accomplish this, the Chair of the CSA will need to direct the staff to develop Standards for State Facilities as directed in SB 737 and then along with the Revised Standards for local facilities which were recently approved by the board, improve the oversight of all of California's detention facilities.

 Safety is paramount for staff and juveniles. If no one feels safe nothing positive can be accomplished. The expectations about the treatment of juveniles, the services that must be provided, and how they will be delivered must be articulated very clearly and written up so there is no misunderstanding. Staff must be involved in the development of these plans and the board then needs to make sure that standards are enforced and everyone is held accountable.

2) The key challenges to the Board, in my opinion, are outlined in my answer to the first question. The remaining appointments must be made to the CSA and SAG before they can be effective, functioning boards. The CSA's precise purpose, functions and responsibilities must be understood by each member and what commitment will be required of them before the CSA can perform the valuable role it must if we are to realize a reduction in recidivism and improved outcomes that will translate into better lives for our clients.

3) I have prepared for these responsibilities by spending an enormous amount of time in L.A. County's Halls, Camps and Group Homes and serve on numerous governmental committees and private boards that deal with policy and service delivery. I have read everything that has been provided by the CSA staff. I have Google alerts on the subject and read a great deal of newly published works on Juvenile Justice.

 The staff conducted an orientation for me before the first meeting which lasted about 2 hours, and otherwise has been responsive to my questions, although not promptly. Success depends on leadership, and I look forward to working with Secretary Jim Tilton and Executive Director Scott Harris.

4) At our first meeting in March the Board agreed to change the bimonthly meeting dates from Thursdays to Wednesday.

 I questioned the staff about canceling the Board meeting in May and was told there were only two agenda items, which was puzzling since the Board had only met once in a year. Canceling the May meeting, in my opinion, was a lost opportunity to engage and inform the mostly new

Board members about their responsibilities, and also to be briefed on the PLO lawsuit and the CSA's response.

5) The CSA staff visits each county's local facilities every other year. These facilities are notified in advance. Currently they do not have any oversight responsibility for state facilities according to the staff.

I am a Commissioner on the LA County Commission for Children and Families so I have Board of Supervisor authority to go into any facility (I do go unannounced from time to time) in this county where county money is spent on youth at risk. I talk with youth and staff and report any concerns to my board office. I have had a positive relationship with the Probation Department during my eight years on the Commission, and have learned a great deal about what works and what doesn't.

I have not asked the CSA staff to arrange any local visits. I did ask to tour two CYA facilities in Norwalk and Chino. I was not able to tour Norwalk on the Sunday that I went to hear a Catholic service there but I was met by a staff member who was very accommodating and informative. When I asked for a tour of Chino, I was asked why I wished to go because we had no authority at all to be there. I didn't pursue the request.

6) I don't know if the CSA has sufficient authority to ensure that needed changes are made but it is clear that needed changes are not being made in many cases. Perhaps sanctions need to be developed. Historically Probation was paid by the county but now the state pays for most of the camp funding. Couldn't the cost of correcting the violations be deducted from their annual allocations?

7) I have not been informed about what steps the CSA plans to take in response to the lawsuit. The only communication I have received since it was filed were directions to copy everything in my package when served, and send it to the lawyer in the Attorney General's office

8) Competent educational services must be a priority in every juvenile facility. The lack of them is a very serious and ongoing problem in Los Angeles County and probably all over the state. Even with the DOJ monitoring educational instruction the performance is very poor in most of our facilities. Dayrooms are totally inappropriate for the delivery of educational services. The CSA must address this problem, hopefully with members visiting facilities and talking to the youth, teachers, and local officials. In L.A. we have just established an Education Coordinating Council which will play a very active role in improving outcomes for youth in our dependency and delinquency systems.

When courts incarcerate youth, the opportunity is there to make up for years of truancy and poor school performance. It should not be wasted. If this is not accomplished, their crimes will continue and we should be held accountable for that. If classroom space is needed - mobile classrooms should be provided until facilities can be replaced with Halls and camps that are more conducive to rehabilitation. I hope this is a number one priority for the CSA along with ensuring that needed mental health services are provided for all who need them.

9) Revisions on minimum standards for local facilities were approved at the March Board meeting. To my knowledge, the CSA staff has not begun to develop minimum standards for state facilities, so it is unlikely that this will be completed by January, 2007. When they are developed it will not involve site visits. It will only be reviewing and revising the paperwork.

10) Agenda item E at the March Board meeting was an information item about the Staff Safety Audit process which Secretary Hickman requested in March 2005 and the Board approved in May 2005. We have not been advised of the follow-up plans and the timeline provided only covers the completion of the audits by Sept 2007. The audits that were included with this agenda item indicated many very serious facility specific as well as systemic failures. Secretary Hickman requested that all 32 adult facilities and 8 YA facilities be reviewed, but the proposed timeline that was included with that agenda item lists 31 adult and 7 YA's According to the timeline, 10 adult facilities should have been audited by May 2006 and 12 by the next Board meeting in July. We have not received the minutes from the March Board meeting and I do not recall if that was covered then. In the CSA executive Summary Review of Corrective Action Plans it is noted that "the CSA does not have the resources to monitor the corrective action plans" so they recommend the DJJ monitor themselves. (Safety audits and timeline attached)

11) A State Advisory Group is required by Federal statute to recommend to the Board how their funds should be spent . I believe they issue RFP's and then SAG members review proposals and make recommendations. Since SAG has not met in almost 3 years because sufficient appointments haven't been made, members of the Board who were previously on SAG have advised the Board on how the money should be allocated and the Board approved their recommendations in March. The Federal Government is now withholding funds until SAG meets. CSA members have not been informed about the $50 million for services to mentally ill offenders or what role, if any, they will play.

I spent a great deal of time on the JJCPA state grant for LA County. When I asked about the board's review and approval of the $100 million + program, I was told that it was unnecessary because the CSA staff

automatically approves whatever the counties submit. I inquired about the evaluations that are required and was told that each county has their own private password for those. Since these documents should be public, I asked for the reports and received them.

We must ensure that dwindling delinquency prevention funds are spent on programs that work. The CSA's oversight of those funds is critically important.

12) Since the state is out of compliance with the Federal regulations by not having a SAG, the Board supported the recommendation of an expert in the CDCR about the use of these funds. The funds must be spent by November 30th of this year. I think this is a one time recommendation because of the circumstances. The recommended expenditures vaguely fit into the OJJDP Program Purpose Areas. This should not be a precedent because communities must be supported in their delinquency prevention efforts. I have attached this information as requested, along with the OJJDP Program Purpose Areas for JABG grants.

STAFF SAFETY AUDITS
PROPOSED TIMELINE

DATE	ACTIVITY
July 21, 2005	Board Meeting Report outcome of first two audits Determine need to reconvene Criteria Panel, need for modification of process, instrument(s) etc.
First week of August 2005	Make any needed changes to inspection criteria/instrument – reconvene Criteria Panel if necessary.
August-September 2005	Audit 2 CDC facilities and 1 CYA facility
September 15, 2005	Board Meeting Report outcome of audits
October-November 2005	Audit 2 CDC facilities and 1 CYA facility
November 17, 2005	Board Meeting Report outcome of audits
December 2005-January 2006	Audit 2 CDC facilities and 1 CYA facility
January 2006	Board Meeting Report outcome of audits
February-March 2006	Audit 2 CDC facilities and 1 CYA facility
March 2006	Board Meeting Report outcome of audits
April-May 2006	Audit 2 CDC facilities and 1 CYA facility
May 2006	Board Meeting Report outcome of audits
June-July 2006	Audit 2 CDC facilities and 1 CYA facility
July 2006	Board Meeting Report outcome of audits
August-September 2006	Audit 2 CDC facilities and 1 CYA facility

STAFF SAFETY AUDITS
PROPOSED TIMELINE

DATE	*ACTIVITY*
September 2006	Board Meeting Report outcome of audits
October-November 2006	Audit 3 CDC facilities
November 2006	Board Meeting Report outcome of audits
December 2006-January 2007	Audit 3 CDC facilities
January 2007	Board Meeting Report outcome of audits
February-March 2007	Audit 3 CDC facilities
March 2007	Board Meeting Report outcome of audits
April-May 2007	Audit 3 CDC facilities
May 2007	Board Meeting Report outcome of audits
June-July 2007	Audit 3 CDC facilities
July 2007	Board Meeting Report outcome of audits
August-September 2007	Audit 2 CDC facilities
September 2007	Board Meeting Report outcome of audits

STAFF SAFETY AUDITS
PROPOSED TIMELINE

DATE	*ACTIVITY*
March 17, 2005	Board of Corrections meeting Chair direct staff to explore possibility of BOC staff conducting staff safety audits at all state prisons and youth facilities – begin assembling background materials
April 19, 2005	Letter to subject matter experts and labor groups notifying them of proposal and request participation
First week of May 2005	Meet with CDC and CYA Directors, Discuss prioritization of staff safety audits, scope, approach, audit team composition, and timeline
Second week of May 2005	Finalize plan and prepare letters and materials to Criteria Panel for distribution following the board meeting
May 19, 2005	Board of Corrections meeting Present proposal and timeline
May 24-25, 2005	Criteria Panel meets to develop criteria and instrument for audit team to use
First week of June 2005	Second meeting of Criteria Panel or subcommittee if needed
Second Week of June 2005	Prepare Criteria Panel work products and any instrument needed for on-site audits
Third week of June	Audit Team meets to discuss plan of action, roles and responsibilities
Fourth week of June 2005	Conduct audit of one CDC facility.
Second week of July 2005	Conduct audit of one CYA facility.

OVERVIEW

At the March 17, 2005 meeting of the California Board of Corrections (BOC), Chairman Roderick Q. Hickman requested that staff develop a proposal to review staff safety issues at the state's 32 prisons, and 8 juvenile facilities. This request followed the receipt two critical reports on staff safety at the California Institution for Men.

At the May 19, 2005 BOC meeting, the Board approved staff's recommendation to establish a Staff Safety Audit Criteria Panel of subject matter experts in order to establish the criteria by which California's state prisons and youth detention facilities will be audited. The panel will also be asked for recommendations on the audit instrument. BOC staff has obtained background material from the American Correctional Association, National Institute of Corrections, California Department of Corrections (CDC), the BOC, and the states of Arizona, Minnesota and Pennsylvania to assist in the development of criteria and/or an audit instrument. BOC staff will be responsible for development of the work product and managing the audit process.

On May 19, 2005 the BOC also approved a timeline of audits that will result in all 32 prisons and 8 CYA facility audits being conducted over a period of approximately 28 months (ending in September 2007). The facilities will be audited in an order established by management staff at CDC and the California Youth Authority (CYA). This timeline calls for approximately three facilities to be audited every two months and the results reported to the BOC at its regularly scheduled meetings.

An audit team consisting of three BOC Field Representatives, three CDC employees (classification to be determined), and three CYA employees (classification to be determined) will conduct the audits. Working in groups, the auditors will have responsibility to conduct specified portions of the audit based on criteria developed by the Criteria Panel. After each audit, a debriefing will be performed among team members and modifications to the criteria or approach will be made as needed. If major changes are needed, consideration will be given to reconvening the panel.

Staff Safety Audit Criteria Panel

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Chuck Alexander, Vice President
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John Dovey, Chief Deputy Director
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* Present on 5-24-05 only

TO: **Chairperson and Members** **DATE: March 16, 2006**

SUBJECT: **Report on Staff Safety Evaluations: Preston Youth Correctional Facility, O.H. Close Youth Correctional Facility, DeWitt Nelson Youth Correctional Facility and N.A. Chaderjian Youth Correctional Facility.**

AGENDA ITEM: E

ACTION:

INFORMATION: X

RESOURCE PERSON: **Robert Takeshta**

Summary:

This agenda item is provided as an update to the Corrections Standards Authority (CSA) on Staff Safety Evaluations conducted at the Preston Youth Correctional Facility on July 12-15, 2005 and O.H. Close Youth Correctional Facility, DeWitt Nelson Youth Correctional Facility and N.A. Chaderjian Youth Correctional Facility on August 3-18, 2005.

Background:

At the March 17, 2005 meeting of the Board of Corrections, Chairman Roderick Q. Hickman requested staff present a proposal to establish a panel to review staff safety issues at all of the state's 32 prisons and eight juvenile facilities following the receipt of two critical reports on staff safety at the California Institution for Men.

Approval of staff's proposal occurred at the May 19, 2005 meeting. It included convening a panel of subject matter experts to establish the criteria and a timeline, by which the state's prisons and youth detention facilities would be evaluated, resulting in all 40 facility audits being conducted over a period of approximately 28 months (ending in September 2007). The proposal also included the formation of an evaluation team consisting of three CSA Field Representatives, three Adult Operations (AO) employees, and three Division of Juvenile Justice (DJJ) employees to conduct the evaluations. Further information regarding the panel of experts and the timeline is included as Attachment A.

On May 24-25, 2005 the panel of experts developed an approach for the evaluation team to use. The panel agreed the process should result in meaningful recommendations to management rather than strictly being an audit. They also agreed the process should focus on assaults on staff and, if necessary, be broadened to include other factors that result in staff injury. The panel decided the process should first assess available data from incident reports, which may point to factors that would vary the emphasis for follow-up inquiry at each institution. Additional sources of information were identified that may be of use depending upon the direction of the evaluation. The panel's consensus was that staff interviews should take place; however, they should be done informally at the worksite and it was recognized that during facility tours and interviews, other important safety issues will present themselves and the evaluators should also be sensitive to those concerns.

On June 14, 2005 the evaluation team met for orientation. The process was introduced and the team informed of the objectives. They discussed the criteria developed by the panel of experts and how to best perform the process and the schedule was finalized.

Memorandum

Date January 3, 2006

To : Rod Hickman, Secretary
Department of Corrections and Rehabilitation

Subject: REVIEW OF STAFF SAFETY EVALUATION CORRECTIVE ACTION PLANS

The Corrections Standards Authority (CSA) has received correction actions plans from the Division of Juvenile Justice (DJJ) for Staff Safety Evaluations conducted at the following institutions:

- Preston Youth Correctional Facility
- N.A Chaderjian Youth Correctional Facility
- O.H. Close Youth Correctional Facility
- DeWitt Nelson Youth Correctional Facility

In response to the corrective action plans, the CSA developed an Executive Summary highlighting key findings from the Staff Safety Evaluation Reports and the elements of the corrective action plans. The summary is attached to this memo.

It is apparent that considerable thought and effort went into the development of the plans. Many of the findings have already been addressed or corrected; others will be addressed as part of the *Farrell* mediation plan or following a scheduled training needs assessment process. The findings requiring resources beyond those available to the DJJ are or will be addressed by Budget Change Proposals. There were only a few findings in which DJJ was not in concurrence and the rationale for non-concurrence was appropriate.

Thank you for the opportunity to review the corrective action plans. Please do not hesitate to contact me if you have any questions.

Jerry A. Read
Deputy Director (A)
Corrections Standards Authority

cc: Jeanne Woodford, Undersecretary
Bernard Warner, Chief Deputy Secretary

CORRECTIONS STANDARDS AUTHORITY

REVIEW OF CORRECTIVE ACTION PLANS

PRESTON YOUTH CORRECTIONAL FACILITY
O.H. CLOSE YOUTH CORRECTIONAL FACILITY
DEWITT NELSON YOUTH CORRECTIONAL FACILITY
N.A. CHADERJIAN YOUTH CORRECTIONAL FACILITY



January 2006

Department of Corrections and Rehabilitation
Corrections Standards Authority
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Sacramento, CA 95814
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EXECUTIVE SUMMARY

The Staff Safety Evaluation Team, created by the Corrections Standards Authority (CSA) in response to concerns about institutional safety, conducted evaluations of the following four Division of Juvenile Justice (DJJ) facilities: Preston Youth Correctional Facility (Preston) July 12-15, 2005, and the three facilities that make up the Northern California Youth Correctional Center - N.A Chaderjian (Chad), O.H. Close (Close) and DeWitt Nelson (DeWitt) Youth Correctional Facilities August 3-18, 2005. A panel of correctional experts developed the criteria upon which the evaluations are conducted and one of their objectives was to avoid duplicating audits, inspections and evaluations that were already conducted. As such, the scope of these evaluations has been limited to specific issues concerning staff assaults, training, safety equipment, staffing, physical plant issues and interviews with staff.

STAFF SAFETY EVALUATION FINDINGS

As a result of the July and August 2005 evaluations, the Staff Safety Evaluation Team identified a number of findings, the majority of which fall into five categories: physical plant, staffing, training, policies and procedures, and safety equipment. Attachment A lists 108 findings that applied to one or more of the four facilities. The key findings are as follows:

Physical Plant

- The lack of physical plant maintenance and poor design features contribute to an unsafe environment at Chad, Close, and Dewitt. The apparent neglect of these facilities is evident throughout each including locks that can be defeated by wards, a lack of floor drains resulting in flooding, inadequate fencing to prevent wards from scaling interior fences, inoperative plumbing, etc.

- The work order tracking system utilized by Plant Operations at Chad, Close, and Dewitt is ineffective and contributes to the maintenance issues.

- There is a lack of program/housing space for violent prone wards.

Staffing

- At times, there is an inadequate number of custody and correctional counselors available to perform necessary duties at Preston, Chad, Close, and Dewitt.

- The lack of adequate staffing has resulted in mandatory overtime at Preston, Chad, Close, and Dewitt. The end result is an increase in sick leave usage and the lowering of staff morale.

- The use of staff in vehicles to monitor ward movement and to provide minimal "patrol" functions is ineffective at Preston, Chad, Close, and Dewitt.

- Supervisors (custody and youth correctional counselors) do not consistently monitor the activities of security staff at Chad, Close, and Dewitt.

- Supervisors are used to backfill vacant line staff positions resulting in their inability to perform supervisory duties.

- There are not an adequate number of teachers and maintenance staff at Chad, Close, and Dewitt.

Training

- DJJ custody staff, correctional counselors, senior correctional counselors, and supervisors are not receiving the required number of hours to meet their mandated annual training.
- DJJ does not have a formal facility training officer (FTO) program to provide structured training to new staff. FTO programs ensure that new staff are competent in their duties before they are allowed to perform the duties unsupervised.
- DJJ does not provide formal training for Facility Training Officers (facility staff selected to train newly appointed officers).
- DJJ staff needs to receive formal training in how to deal more effectively with mentally ill wards.
- An annual training plan needs to be developed and implemented for all DJJ staff.

Policy and Procedures

- Policy and Procedures Manuals are outdated, inconsistent and not reflective of current operations.
- Post orders are outdated, generic, and have no signatures of authority, and there is no process in place to ensure that staff have read and understand the post orders.
- Emergency response protocols need to be reviewed and staff needs training in responding to emergencies.
- The DJJ lacks a formal objective ward classification system to meet the security and custody needs of each facility.
- Emergency fire evacuation drills are not routinely conducted at Preston, Chad, Close, or Dewitt.
- There were inadequate tool control policies and procedures in some instances.

Safety Equipment

- Stab vest inventories are not maintained or refurbished; therefore, staff may not have vests issued or available to them at Chad, Close, or Dewitt.
- Personal alarms work intermittently or not at all at Preston, Chad, Close, and Dewitt.
- The transportation vehicles at Preston have outlived their useful life (average more than 179,000 miles), are unreliable (leading to unsafe situations), and in need of replacement.
- There are an inadequate number of handheld radios available for staff use at Preston, Chad, Close, and Dewitt. Secondarily, there is an insufficient supply of "charged" batteries available for oncoming shifts.
- Staff at Chad would benefit from protective equipment (e.g., face shields) to protect them from incidents of gassing that are prevalent there.
- A process for replacing Oleoresin Capsicum (OC) spray canisters on an as-needed basis needs to be developed.

DJJ Corrective Action Plans

As a result of the evaluations and subsequent reports, the Division of Juvenile Justice developed corrective action plans to address each of the findings. The responses to key findings are as follows:

Physical Plant
A multi-facility committee has been established to oversee and conduct an evaluation of maintenance needs for all DJJ facilities with a completion date of March 1, 2006. Those issues that can be remedied with existing resources will be addressed immediately; those beyond existing resources will be forwarded to the Office of Facilities Management and a Budget Change Proposal (BCP) submitted as necessary. In some instances, BCPs have been approved for physical plant deficiencies and the institution management is awaiting funding or for work to begin. Memos have been issued to staff at Chad reminding them to ensure doors are properly secured when closed and to immediately report malfunctioning doors. DJJ is also arranging an assessment of the locking systems.

DJJ is exploring options for the establishment of an automated work order tracking system and will work with the Office of Facilities Management to develop an effective manual system for use until an automated system is available.

As part of the *Farrell* remedial planning process, DJJ is consulting with nationally recognized experts to assist in design, development and implementation of additional rehabilitation/treatment interventions, specifically in the areas of violence reduction, gang integration, substance abuse/dependence and normative culture.

Staffing
DJJ reports that the *Farrell* remediation plans will address staffing issues through reduced living unit population and increased staffing.

In regard to teaching vacancies, DJJ staff in conjunction with Education Services will continue efforts to recruit educational staff, including teachers and substitutes. Principals will conduct ongoing hiring interviews.

The safety, security, and programmatic implications of vehicle use within the security perimeters of DJJ facilities will be assessed by a work group designated by the Director, Division of Juvenile Facilities. The group will prepare a recommended standardized policy for vehicle use within DJJ facilities.

Training
DJJ has begun a training needs assessment and intends to develop lesson plans to address needed training.

Policy and Procedure
DJJ will prepare a comprehensive plan for the establishment of current standardized institutional operations manuals by March 1, 2006.

Post orders will be updated by February 1, 2006 and will be audited to ensure they are being read and understood.

DJJ will place emergency response procedures and the use of force policy in a binder in each living unit and communication center by December 14, 2005.

DJJ is developing a comprehensive statewide classification system as part of the *Farrell* remediation plan.

DJJ has developed a schedule for fire drills and has recently conducted and documented fire drills.

DJJ will assemble a committee of Senior Youth Correctional Counselors to develop a plan and submit a proposal to the Superintendent's Office regarding tool accountability on the living units (scissors, barber tools, brooms, mops, etc.). The plan is to be implemented on January 5, 2006. The plan will include quarterly audits of tool accountability on the living units to ensure compliance with the instructions issued.

Safety Equipment
DJJ plans to develop a tracking system to monitor the expiration date of vests. The current inventory tracking process will be revised to include a column for the expiration date of vests. There is currently a Department-wide program to update and increase the number of vests provided to staff.

The personal alarm system is being replaced. This will eliminate the concerns cited in the evaluation reports, as the new system will have a single alarm zone.

The transportation fleet has not been replaced on schedule. Purchase orders have been prepared to replace all eight transportation vehicles and are pending budget approval. Adult Operations Division has loaned three vans to DJJ.

Office of Facility Management/Radio Communications Unit (RCU) completed an assessment of the DJJ facility radio systems. RCU recommends DJJ purchase radios and equipment as needed and will schedule training and provide a training manual in the proper use and operation of hand held radios. RCU recommends participating in the statewide 800 Mhz radio system rebanding project covering all law enforcement agencies in California.

Face shields have been ordered for each living unit at Chad. Bloodborne pathogen clothing is available on each unit for staff.

DJJ has established institutional standards for checking OC canisters and developing an appropriate replacement schedule. In addition, DJJ plans to conduct quarterly audits of OC canister records to ensure compliance with established standards.

As the majority of the responses contained in the correction action plans include projected completion dates, it is imperative that the plans are monitored to ensure that results are achieved. Some completion dates were listed as "to be determined," which makes the monitoring task and accountability more difficult. The CSA does not have the resources to monitor the corrective action plans, and we recommend that DJJ Chief Deputy Secretary Bernard Warner or his designee be responsible for this task.

The CSA appreciates the cooperative working relationship we have encountered with the staff of DJJ. The staff safety evaluation process has been well received. Institution management and staff have been forthcoming and recognize that the purpose is to improve staff safety. We look forward to observing the changes.

DJJ FACILITIES

Item*	Recommendations/Description	Preston	Chad	Close	DeWitt
1.	*The lack of maintenance for the entire complex contributes to an unsafe environment.*		X	X	X
2.	*Plant Operation staff has indicated that the original facility construction was substandard in several building trades. Improperly installed wiring for security devices and complete electrical systems; HVAC systems that were ten years old when installed; block walls that were not filled with concrete and substandard plumbing were highlights of discussions. In many instances maintenance is not the issue, but complete replacement of entire systems is needed.*		X		
3.	*Staff reported that the wards have the ability to defeat the locking mechanisms on all of the sleeping rooms within this facility.*		X		
4.	*High temperatures were noted within each of the lodges.*	X			
5.	*Unit I, Sacramento and Kern recreation yard fences are not suitable for use due to the material used and the methods used to secure the individual recreation area (IRA) enclosures.*		X		
6.	*The security perimeter fences surrounding the exercise yards of Units II, III, IV, V and VI are not secure.*		X		
7.	*Partitioning the current living units and creating four halls within each unit is a cost effective means of reducing the number of wards within each hall, increasing staff and ward safety and enhancing program opportunities.*		X		
8.	*Floor drains are not provided in any of the units. Wards are able to substantially flood the halls.*		X		
9.	*The work order tracking system currently utilized by Plant Operations and the facility is ineffective.*		X	X	X
10.	*There is heavy plant growth between the perimeter fences that could conceal contraband or aid in escapes. In some cases, the heavy plant growth is a fire hazard.*	X	X	X	X
11.	*Direct supervision of security staff is not being accomplished.*		X	X	X
12.	*Several vacancies exist among the management staff at NACYCF. This is particularly noteworthy considering that this facility houses some of the most difficult to manage wards and is the recipient of intense media scrutiny regarding allegations of poor management, employee misconduct and excessive violence.*		X		

Item*	Recommendations/Description	Preston	Chad	Close	DeWitt
13.	*Additional staff should be assigned to Units III, IV, V, VI and McCloud Hall in Unit II.*		X		
14.	*At times, there are too few security and escort staff to safely respond to emergencies within the facility.*		X	X	X
15.	*Using lodge officers as escort officers dilutes the staff to ward ratio during heavy movement periods.*	X			
16.	*The housing unit control booths should not be staffed with YCC's.*		X		
17.	*Current staffing patterns do not allow for the Senior Youth Correctional Counselors (SYCC) to adequately supervise the YCCs assigned to each hall housing wards.*		X	X	X
18.	*Staffing levels among teaching staff may be an underlying cause for concern for staff safety.*	X	X	X	X
19.	*Staffing levels among maintenance staff may be an underlying cause for concern for staff safety.*		X	X	X
20.	*The use of staff in vehicles to monitor ward escort/movement and some "patrol" functions is ineffective.*		X	X	X
21.	*Transportation officers reported that the average vehicle used to transport wards is more than five years old and has odometer readings in excess of 179,000 miles.*	X			
22.	*Current staffing levels have resulted in mandated overtime for custody staff.*	?	X	X	X
23.	*The DJJ lacks a formal objective classification system. The current method for determining ward facility and housing assignments fails to account for the security and custody needs of the youth.*	X	X	X	X
24.	*Staff reported that emergency fire evacuation drills are not being conducted.*	X	X	X	X
25.	*There is no accountability for tools maintained in the living units.*	?	X	X	X
26.	*The Institutional Policy Manual needs to be reviewed and updated. Post orders for the YCC and YCOs do not contain the signature of authority or date of revision. There is no process in place (in the units) to ensure staff has read and understand the requirements of the post orders (post order acknowledgement).*	X	X	X	X
27.	*The Institutional Policy Manual sections pertaining to emergency response and staff accounting need to be reviewed and updated.*	X	X	X	X
28.	*Post orders located within each living unit were generic and outdated. They did not reflect current practice.*	X	X	X	X

Item*	Recommendations/Description	Preston	Chad	Close	DeWitt
29.	*Hair care service areas are located within the program center. The post orders do not include a regular documented inventory/accounting of the tools used in the hair care area.*	X			
30.	*Staff was unable to produce current policy and procedures regarding emergency procedures, deployment of chemical agents, or daily operations procedures.*		X	X	X
31.	*There are no procedures in place to address the use of the 37-millimeter gas guns maintained in the unit control booth on Unit I and in the school control booth.*		X		
32.	*The inventory for hazardous materials is not consistently maintained. There are no visual Material Safety Data Sheets (MSDS) placed on the outside of the cleaning material storage units and additional training and supervision is necessary for wards using the materials.*	X			
33.	*A large amount of combustible paper products was noted in ward areas throughout the facility.*	X			
34.	*Post orders for the YCC and YCOs do not contain the signature of authority or date of revision. There is no process in place (in the units) to ensure staff has read and understand the requirements of the post orders (post order acknowledgements).*		X	X	X
35.	*Staff indicated that individuals are assigned to the emergency response teams as they report to work. The unit post orders did not delineate responsibility for emergency response. In addition, unit staff was uncertain as to who would respond to incidents or emergency situations and what security equipment to take.*		X	X	X
36.	*No documentation was present to support that area searches are being conducted.*		X	X	X
37.	*The Chaplain was unaware of duty statements that would provide guidance to the religious staff working in the chapel. The chapel area did not contain areas clearly marked as out of bounds.*	X			X
38.	*The current staffing for general population units needs to be increased due to the violence and increased occurrence of staff assaults.*		X		
39.	*Wards assault staff in an effort to be transferred to an adult facility.*		X		
40.	*A variety of assault methods were used against staff members (the majority were gassings).*		X		

Item*	Recommendations/Description	Preston	Chad	Close	DeWitt
41.	*There are an alarming number of the staff assaults that are committed via the sleeping room food ports.*		X		
42.	*Gang entrenched wards "game" the system, allowing them to control their environment. The segregation of rival gangs has led to empowering the strongest gang at the facility.*		X		
43.	*Staff are targeted by wards for assaults. Entrenched gang members direct retaliatory assaults against staff.*		X		
44.	*Protective clothing and face shields could reduce the potential for injury from gassing.*		X		
45.	*Data on the subject of staff assaults are difficult to capture and analyze. Reporting of staff assaults needs to use similar reporting criteria. A central tracking system for incidents, particularly regarding staff assaults, would provide more meaningful data and trends may be identified as a result.*	X			
46.	*Line staff believes that the "Open Program" rewards wards assigned to Unit I for disciplinary action.*		X		
47.	*Staff says the Disciplinary Decision Making System (DDMS) is cumbersome, and that wards are not deterred by the consequences.*	?	X	?	?
48.	*The number of incidents of staff assault are more frequent in three living units where vests are not available than in the living unit where vests are mandated.*	X			
49.	*Statistics indicate gang influence is responsible for an alarming number of staff assaults. Wards with gang affiliations are more likely to commit assaults on staff. Wards in special management programs and Norteño gang members are responsible for the majority of staff assaults.*		X		
50.	*Injuries do not appear to be initially well documented.*	X			
51.	*Supervisors concurred with management that the possible closures will result in increased assaults, and staff is deeply concerned for their personal safety.*	X		X	
52.	*Statistics provided by the safety officer support the need for increased training in areas including ward relations, officer safety and emergency responses. Reinforcement by supervision at all levels is needed to ensure the information received during the training is applied in the workplace.*		X	X	X
53.	*Custody staff appears to be receiving training in safety related issues, but mandated annual training hours are not being completed.*	X	X	X	X

Item*	Recommendations/Description	Preston	Chad	Close	DeWitt
54.	*Perishable skills training specific to armed assignments has not been documented.*		X		X
55.	*Tracking attendance and ensuring all persons actually attend training as scheduled remains a challenge for the Training Manager. The team members were concerned that not all officers were trained on the appropriate subjects. A dedicated manager may ensure all staff receives appropriate training.*	X	X	X	X
56.	*The Supervisors are not receiving annual refresher training necessary for their positions including effective supervision, leadership, discipline and contract agreements.*	?	X	X	X
57.	*Training records do not reflect that YCCs are receiving training updates specific to ward counseling and supervision.*	?	X	X	X
58.	*A minimum of 16 hours of institutional orientation is mandated for all new staff before assuming ward supervisory duties. The training is being done for the custody staff. It was unknown if the orientation was being done for non-custody and medical staff.*		X		X
59.	*Formal orientation training is not provided to non-custody staff prior to their assignments.*			X	
60.	*Policies for orientation and training of non-custody staff have not been updated since 1999. Many non-custody staff receive little or no initial training or new employee orientation.*	X		X	
61.	*No special training is provided to staff members specific to officer safety in combative/assaultive situations.*	X	X	X	X
62.	*No special training is provided to staff members who act as training officers for purposes of orientation training.*	X	X	X	X
63.	*No formal training is in place to provide "field training" to newly appointed officers.*	X	X	X	X
64.	*An annual training plan needs to be developed for the facility in concert with an agency-wide annual training plan.*	X	X	X	X
65.	*Training deficiencies could be improved through better coordination and by forming partnerships to maximize the use of all available training resources.*	X	X	X	X
66.	*The personal alarm systems used by staff are undependable.*	X	X	X	X
67.	*The personal alarm system utilized by the facility is comprised of several systems. Each system is zone specific and staff must know what zone they are in and have the proper alarm actuator for the system to work.*	X	X	X	X

Item*	Recommendations/Description	Preston	Chad	Close	DeWitt
68.	*Staff were provided radios; however, in most cases the radios were turned off.*	X			
69.	*Staff reports there are not enough personal radios for all staff and that the batteries in the personal radios assigned to them do not hold a charge. Furthermore, the staff does not have the capability of charging the batteries on the unit and must request another battery from central control. Staff reported that, at times, four to five battery changes are needed per shift.*		X	X	X
70.	*Officers are provided safety equipment as specified by policy, but the inventory of specific items may be insufficient due to the facility size and design.*	X	X	X	X
71.	*The current design of Preston does not lend itself to the current best practices of managing the incarcerated juvenile population and is not congruent with the mission of the Juvenile Justice Division.*	X			
72.	*Staff is assigned Oleoresin Capsicum (OC) spray canisters. These canisters are not checked regularly and there is no procedure in place to ensure the canisters are operable.*		X	X	X
73.	*Line staff is concerned about their safety because of the inadequacy of their OC spray for group application.*			X	
74.	*Line staff would like 37/40 mm munitions delivery systems available as a use of force option on the units due to the perceived effectiveness of the system.*		X		
75.	*The proximity of wards to the armory and the security of the cabinetry containing the munitions create an unsafe condition.*				X
76.	*The sub-armory lacks adequate oversight and documentation.*		X	X	
77.	*Security and Escort (S&E) officers indicated that they do not have tactical vests available to them.*		X		
78.	*Some vests will need to be replaced and a replacement program has not been instituted.*		X	X	X
79.	*Low morale has increased the use of sick leave by line staff, which results in staff being held over to cover vacant shifts.*		X		X
80.	*The absence of regular staff results in interruption of programs, as replacement staff is usually an intermittent employee, who is not trained to facilitate group counseling sessions.*		X		X
81.	*Due to their temporary detention or special management program status, the wards in the Ironwood Lodge did not have access to the outdoor recreation areas.*	X			

Item*	Recommendations/Description	Preston	Chad	Close	DeWitt
82.	*Teaching staff indicates that the transfer of information between custody and teaching staff does not always occur in a timely fashion. At times, this information pertains to security issues that affect the entire institution.*	X			
83.	*Effective communication and training of staff has been impacted by the lack of budget resources.*		?	?	X
84.	*The facility does not practice monthly fire drills.*	X	X	X	X
85.	*Staff vacancies and inversing staff has led to an increase in sick leave.*		?	?	X
86.	*Personal alarms or radios work intermittently, thereby compromising staff safety.*	X	X	X	X
87.	*These programs are intensified as they deal with the most difficult and troubled wards. It is essential that there is a sufficient number of qualified and trained staff available at all times. (Lassen, Modoc, and Yosemite)*				X
88.	*There is a crucial need to have adequate programming space for assaultive wards.*	X			
89.	*Custody staff needs training in how to deal more effectively with mentally ill wards.*	X	X	X	X
90.	*Specialized/Intensive Treatment programs treat the most difficult and troubled wards. It is essential that there are a sufficient number of qualified and trained staff available at all times. Currently, there are not a sufficient number of psychologists onsite to provide treatment for these wards.*	X			
91.	*Some counselors said that staff safety is compromised when a disruptive ward remains in a dorm.*	X			X
92.	*It is critical that the facility be allowed to maintain adequate programming space for assaultive wards, specifically Inyo Hall.*	X	X	X	X
93.	*Some type of transitional intervention program is needed for handling assaultive or violence prone wards.*	X	X	X	X
94.	*Some staff said that counselors isolate themselves in the youth counselor station.*				X
95.	*Instead of remaining in the Communications Center to direct, the watch commander responds to emergency situations and direct operations.*	?	X	?	?
96.	*Staff are uncertain of their duties during an emergency because they have not participated in emergency response drills.*	X	X	X	X
97.	*Staffing and procedures for ward suicide watch at the Outpatient Housing Unit (OHU) should be reviewed by the DeWitt Nelson administration.*				X

Item*	Recommendations/Description	Preston	Chad	Close	DeWitt
98.	*The recent addition of a staff member in the Sequoia Lodge on weekdays should be designated as a permanent seven day a week post.*	X			
99.	*There is a need for additional custody staff, especially on the second watch.*			X	
100.	*Supervisors need to supervise and not be utilized to backfill line positions. Additional custody staff, especially on the second watch, is needed.*	X	X	X	X
101.	*When teaching staff does not report for work for various reasons, a substitute is not brought in. As a result, wards are returned to their living unit to wait until the next period to return to the school program.*	X	X	X	X
102.	*There is a need for additional program space for disruptive wards. All line staff stated the need for additional ward supervision (custody) staff.*	X	X	X	X
103.	*Staff assaults have reduced the availability of regular staff who facilitate some of the treatment programs.*		X		
104.	*The nurses working at the specialized and intensive treatment programs felt safer than the nurses assigned to the clinic.*	X			
105.	*Line staff said they feel safer working in a program post assignment.*		X		
106.	*Wards housed at Sacramento Hall, who are restrained when out of their rooms, are allowed to participate in the academic classroom unrestrained. There are inadequate staff in the classroom to quell a disturbance if these special management wards were to act out violently.*		X		
107.	*While they are working in a classroom, the teachers feel that their reports of ward miscondcut have no clout.Tthe teachers would like to see a more visible presence of uniform custody officers.*			X	
108.	*There needs to be a more visible presence of uniform custody officers while wards are in the classroom moving to and from the classrooms and in the gymnasium.*	X			

*** Item numbers do not correspond to the finding numbers used in the corrective action plans.**

TO: **Chairperson and Members** **DATE: March 16, 2006**

SUBJECT: **Juvenile Accountability Block Grants (JABG) Distribution of Funds to Division of Juvenile Justice** **AGENDA ITEM: K**

ACTION: X
INFORMATION:

RESOURCE PERSON: Leslie Heller

Summary:

This agenda item requests the Corrections Standards Authority's (CSA) approval of the distribution of $7,706,562 in unallocated JABG funds to the California Department of Corrections and Rehabilitation (CDCR) – Division of Juvenile Justice (DJJ).

Background:

The JABG Program funds accountability-focused efforts to combat juvenile crime (Chapter 46, Subchapter XII-F, Omnibus Crime Control and Safe Streets Act of 2002). Seventy five percent of the funding distributed each year in California is based on federal formula direct awards going to specified cities and counties. Much of the remaining dollars, plus interest earned on all of the JABG funds, create a separate account of discretionary funds to be distributed in a manner consistent with the state's goals and priorities. All funds are time-sensitive.

A current total of $7,706,562 is available in discretionary funding. Of this amount, approximately $6,279,997 expires on November 30, 2006, with the remainder expiring up through May 2008.

DJJ has developed an appropriate and timely expenditure plan for these funds. This plan calls for expending funds to:

- improve juvenile corrections facilities;
- initiate implementing the Reformation Program required by Farrell Court settlements;
- establish a restorative justice program; and
- upgrade the parole case management information system.

Funds to be expended in these four areas address concerns identified in Staff Safety Evaluations conducted at four DJJ facilities and critical deficiencies addressed in the Safety and Welfare Remedial Plan. These expenditures are consistent with the purpose of the JABG Program, and DJJ believes the funds can be expended by the November 30 deadline. DJJ's detailed plan for expending the funds is attached.

Recommendation/Action Needed:

1. Authorize grant funding to be disbursed to DJJ as specified in this agenda item.

State of California

Department of Corrections and Rehabilitation
Juvenile Justice

Memorandum

Date : March 1, 2006

To : Jerry Read
Executive Director (A)
Corrections Standards Authority

Subject: **Federal Funding JABG Information and Explanation**

CDCR DJJ proposes to expend federal funds (JABG) received via California Department of Corrections and Rehabilitation Corrections Standards Authority to improve juvenile facilities and programs, to establish a restorative justice program, and to initiate implementation of the reformation program required by the Farrell Court settlement and to address concerns identified by the Corrections Standards Authority.

Farrell Overview:

Over the past year, DJJ has prepared six remedial plans to improve California's juvenile corrections system in response to a state taxpayer lawsuit, *Farrell v. Hickman*, which identified significant deficiencies throughout the Division of Juvenile Justice (formerly known as the California Youth Authority). These remedial plans address the following six areas: Education, Wards with Disabilities, Sex Behavior Treatment, Mental Health, Safety & Welfare, and Health Care Services.

The Safety & Welfare Remedial Plan, filed on December 1, 2005, addresses some of the most critical deficiencies identified in the lawsuit, including

- High levels of violence among youthful offenders and against staff in the state's facilities;
- Lack of a classification tool to identify and separate higher risk (for institutional violence) offenders from lower risk offenders;
- Lack of a distinction among facilities in terms of security classifications;
- Overall lack of rehabilitative programming for offenders in the general population units (direct dedicated treatment services are provided to only 37% of the current population);
- Disconnect between the current treatment needs assessment and individual treatment plans;
- Inability of existing staff to provide effective therapeutic interventions, due to, among other factors, a lack of adequate training, time, and resources;
- Excessive use of force;
- Specific violations of youthful offenders' rights to grievance procedures, access to courts and religious services; and
- A significant need for monitoring, compliance, and quality assurance.

The funds identified below will enable DJJ to begin implementing changes necessary to address the deficiencies described above. More importantly, these changes lay the foundation for continued improvement to California's juvenile justice system.

I. **Improvement of Juvenile Corrections Facilities** – Proposed funding is consistent with United States Department of Justice Juvenile Accountability Block Grant (JABG) guidelines, Program Purpose Area Number 2: "Building, expanding, renovating or operating temporary or permanent juvenile correction, detention, or community corrections facilities."

A. Modular Buildings for Program Space: Modular buildings will be procured through the Prison Industry Authority (approximately 12,000 square feet total).

Modular buildings will be procured through Prison Industry Authority as follows:

$2,580,000

B. Facility Repairs: Repair of housing units, recreation areas, water systems, and food service refrigeration:

Repair of:

1. Housing units at DWNYCF	$57,000
2. Recreation areas at N.A. Chaderjian	$30,000
3. Water Treatment System at Preston	$90,000
4. Installation of suicide prevention toilets at VYCF	$213,000
5. Food Service Refrigeration at NCYCC	$420,000
	$810,000

C. Equipment Repair/Replacement: Replacement of emergency radio systems at SYCRCC and HGSYCF and of 3 transportation vehicles.

1. Statewide transportation vehicles (3)	$90,000
2. Radio Systems	
• SYCRCC	$846,000
• HGSYCF	$847,000
• Pine Grove Camp	$35,000
• Ventura Camp	$30,000
3. Food Service, classroom, program space, and living unit furniture and equipment at various sites.	$150,000
	$1,998,000

). Residential Substance Abuse Treatment (RSAT) positions: RSAT is provided to youthful offenders in Division of Juvenile Justice correctional facilities. It is a six month residential program providing 20-24 hours per week of direct substance abuse treatment service for

each participant. The program uses nationally recognized curriculum, and treatment services are coordinated with the facility schools to ensure that each youth also receives full educational services. The program was initiated in 1997 with federal "Residential Substance Abuse Treatment" funds. The federal program was subsequently discontinued. The State has provided partial funding to continue the program. Additional funding is being sought to maintain services for the balance of the 2005/2006 Fiscal Year.

$673,400

E. Healthcare Medical Equipment: As part of the development of the Medical Remedial Plan, Health Care Management conducted an inventory of all medical and dental equipment at all institutions. The purpose of this inventory was to determine condition and need for replacement. The review concluded that much of the equipment is in poor condition and found some of the equipment to be inoperable.

This request provides for the most critical needs in the area of medical/dental for equipment and supplies.

$208,049

Sub Total **$6,269,449**

II. **Initiate Implementation of Reformation Program** - Proposed funding will facilitate immediate initiation of the reformation program required by Farrell Court settlements and is consistent with United States Department of Justice Accountability Block Grant (JABG) Program Purpose Area Number 11, "Establishing and maintaining programs to conduct risk and needs assessments of juvenile offenders that facilitate the effective early intervention and the provision of comprehensive services, including mental health screening and treatment and substance abuse testing and treatment to such offenders."

A. Consultants/Subject Matter Experts: The nationally recognized experts will provide technical assistance in the design, development and implementation of a classification system and additional rehabilitation/treatment interventions, specifically in the areas of violence reduction, gang integration, substance abuse/dependence, normative culture and interventions designed specifically to meet the needs of female offenders and re-entry services. For costing purposes, not contracting purposes, the total amount per day for an expert was averaged out to $1,500.00 per day.

$630,000

B. Training for Transition Team: In preparation of implementation of Farrell remedial plans, DJJ will establish transition teams at headquarters and at each site. Four days of off-site training will be provided to approximately 70 people (average $1,000.00 per person).

$70,000

C. Training (included in Safety and Welfare): As required by the Farrell Safety and Welfare Remedial Plan, DJJ will implement strategies for Juvenile Supervision/Client Management Classification.

SJS/CMC Assessment Materials and Implementation Training--Strategies for Juvenile Supervision (SJS) and Client Management Services (CMC) are research-based case assessment and correctional management processes, which have been designed to assist corrections professionals who work with offenders in both community and institutional settings. The system provides a structured means for gathering and organizing information about offenders and for translating that information into appropriate case management strategies. The SJS is for use with offenders under age 18; the CMC is for use with offenders 18 and over.

$32,000

Conflict Resolution Training: As required by the Farrell Safety and Welfare Remedial Plan, DJJ will implement strategies for Juvenile Supervision/Client Management Classification.

DJJ intends to provide training in conflict resolution/crisis intervention initially to the Strategies of Juvenile Supervision (SJS) trainers and Conflict Resolution Team members and then to the remaining staff who provide direct services to youth. It is anticipated that approximately 16 staff would be trained as trainers to assist in delivery of the conflict resolution/crisis intervention training.

DJJ will hire consultants/subject matter experts who will conduct site visits, meet with the transition team and leadership and will develop curriculum for Conflict Resolution/Crisis Intervention. Estimated cost is $1,500 per day X 25 days = $37,500. The consultants will train a group of staff on the curriculum in 05/06 ($15,000).

$52,500

D. Modify Aggression Replacement Therapy (ART): This is a multimodal psycho-educational intervention designed to alter the behavior of chronically aggressive adolescents and young children. ART's goal is to improve social skills competence, anger control, and moral reasoning. The costing in the first current and first year includes the consultants developing curriculum, modifying existing ART materials and providing training to the providers.

$250,000

E. Performance Based Standard: PBS (Performance Based Measures) is a performance measurement system developed by the Council of Juvenile Correctional Administrators spell out. The system will provide a means for Division of Juvenile Justice Administration, at the sites and executive levels, to track program performance and to compare DJJ program performance with other Juvenile Justice Systems, nationally. This initial funding will provide for licensing of the system and technical assistance for implementation.

$100,000

F. V-Disc: Expert consultation for implementation of Voice-DISC (Diagnostic Interview Schedule for Children) consists of a computerized mental health assessment system base out of the Center for the Promotion of Mental Health in Juvenile Justice at Columbia University.

$100,000

Sub-Total **$1,234,500**

III. **Establish Restorative Justice Program** - Proposed funding is consistent with United States Department of Justice, Juvenile Accountability Block Grant Guidelines, Program Purpose Area Number 14: "Establishing and maintaining restorative justice programs."

Consultants/subject matter experts: Curriculum, training, and performance measurements to develop a program that will involve DJJ youth in service/learning activities within the institutions and while on parole as a means to develop knowledge/skills and fulfill restorative justice goals.

Sub-Total **$52,613**

IV. **Parole Case Management Information System** - Proposed funding is consistent with United States Department of Justice, Juvenile Accountability Block Grant Guidelines, Program Purpose Area Number 9: "Establishing and maintaining a system of juvenile records designed to promote public safety."

Field Information System Maintenance Proposal Request: The Field Information System is a critical Juvenile Parole Operations information system which provides an electronic field book for field parole agents to maintain current public safety data and casework information regarding youthful offenders under parole supervision. The system is in dire need of constant maintenance due to its age. Through a 1200 hour maintenance agreement, the system would be restructured and migrated from the current hardware to a Web base platform in order for Juvenile Parole Operations to maintain timely critical parolee information such as current addresses, vehicle information, gang information, employment, supervision level, testing information, more accessibility, as well as maintain viability.

Sub-Total **$150,000**

TOTAL **$7,706,562**

If you have any questions or require additional information, please contact me at (916) 323-6001.

BERNARD WARNER
Chief Deputy Secretary

Attachments

cc: Jeanne S. Woodford, Secretary (A)
Elizabeth Siggins, Chief of Juvenile Justice Policy

Overview

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Juvenile Accountability Block Grants Program

Program Purpose Areas

JAIBG (12 areas)

1) Corrections/detention facilities: Building, expanding, renovating, or operating temporary or permanent juvenile corrections or detention facilities, including training of personnel **(JABG 2).**

2) Accountability-based sanctions: Developing and administering accountability-based sanctions for juvenile offenders **(JABG 11).**

3) Court staffing and pretrial services: Hiring additional juvenile court judges, probation officers, and court-appointed defenders, and funding pretrial services for juveniles, to ensure the smooth and expeditious administration of the juvenile justice system **(JABG 3).**

4) Prosecutors (staffing): Hiring additional prosecutors so that more cases involving violent juvenile offenders can be prosecuted and backlogs reduced **(JABG 4).**

5) Prosecutors (funding to improve effectiveness): Providing funding to enable prosecutors to address more effectively problems related to drugs, gangs, and youth violence **(JABG 5).**

6) Prosecutors (funding for technology, equipment, training): Providing funding for technology, equipment, and training to assist prosecutors in identifying violent juvenile offenders and expediting their prosecution **(JABG 5).**

7) Juvenile courts and probation: Providing funding to enable juvenile courts and juvenile probation officers to be more effective and efficient in holding juvenile offenders accountable and reducing recidivism **(JABG 15).**

8) Juvenile gun courts: Establishing court-based juvenile justice programs that target young firearms offenders through the creation of juvenile gun courts for the adjudication and prosecution of these offenders **(JABG 7)** .

9) Juvenile drug courts: Establishing drug court programs to provide continuing judicial supervision over juvenile offenders with substance abuse problems and to integrate administration of other sanctions and

JABG (16 areas)

1) Graduated sanctions: Developing, implementing, and administering graduated sanctions for juvenile offenders **(NEW).**

2) Corrections/detention facilities (JAIBG 1).

3) Court staffing and pretrial services: Hiring juvenile court judges, probation officers, and court-appointed defenders and special advocates, and funding pretrial services (including mental health screening and assessment) for juvenile offenders, to promote the effective and expeditious administration of the juvenile justice system **(revises JAIBG 3).**

4) Prosecutors (staffing) (JAIBG 4).

5) Prosecutors (funding): Providing funding to enable prosecutors to address drug, gang, and youth violence problems more effectively and for technology, equipment, and training to assist prosecutors in identifying and expediting the prosecution of violent juvenile offenders **(combines JAIBG 5 and 6).**

6) Training for law enforcement and court personnel: Establishing and maintaining training programs for law enforcement and other court personnel with respect to preventing and controlling juvenile crime **(NEW).**

7) Juvenile gun courts: Establishing juvenile gun courts for the prosecution and adjudication of juvenile firearms offenders **(revises JAIBG 8).**

8) Juvenile drug courts (JAIBG 9).

9) Juvenile records system: Establishing and maintaining a system of juvenile records designed to promote public safety **(NEW).**

10) Information sharing (JAIBG 10).

11) Accountability: Establishing and maintaining accountability-based programs designed to reduce recidivism among juveniles who are referred by law enforcement personnel or agencies **(revises JAIBG 2 and 11).**

services for such offenders **(JABG 8).**

10) Information sharing: Establishing and maintaining interagency information-sharing programs that enable the juvenile and criminal justice systems, schools, and social services agencies to make more informed decisions regarding the early identification, control, supervision, and treatment of juveniles who repeatedly commit serious delinquent or criminal acts **(JABG 10).**

11) Accountability and school safety: Establishing and maintaining accountability-based programs that work with juvenile offenders who are referred by law enforcement agencies, or programs that are designed (in cooperation with law enforcement officials) to protect students and school personnel from drug, gang, and youth violence **(JABG 11 [accountability programs] and JABG 13 [school programs]).**

12) Controlled substance testing policy: Implementing a policy of controlled substance testing for appropriate categories of youth within the juvenile justice system **(JABG 12).**

12) Risk and needs assessment: Establishing and maintaining programs to conduct risk and needs assessments of juvenile offenders that facilitate effective early intervention and the provision of comprehensive services, including mental health screening and treatment and substance abuse testing and treatment, to such offenders **(NEW, incorporates JAIBG 12).**

13) School safety: Establishing and maintaining accountability-based programs that are designed to enhance school safety **(revises JAIBG 11).**

14) Restorative justice: Establishing and maintaining restorative justice programs **(NEW).**

15) Juvenile courts and probation: Establishing and maintaining programs to enable juvenile courts and juvenile probation officers to be more effective and efficient in holding juvenile offenders accountable and reducing recidivism **(revises JAIBG 7).**

16) Detention/corrections personnel: Hiring detention and corrections personnel and establishing and maintaining training programs for such personnel, to improve facility practices and programming **(NEW).**

Pamala M. Gilyard
Corrections Standards Authority
Board Member, Rank and File

Questions Asked by the Senate Rules Committee

Mission

1. Please provide a brief statement of your goals. What do you hope to accomplish during your term on the Corrections Standards Authority?

It is my opinion that anytime with the responsibilities, it is important that there is collaboration with all stakeholders. This is necessary not along for buy-in, support or commitment, but ensure a positive transition to change while creating a positive environment. The multi-member Authority consisting of individuals with a variety of experiences and backgrounds is the key. My goals are and not limited to:

- *Ensuring the mission statement and goal of the Authority is met*
- *Bringing my diverse experiences and background to the table*
- *Bringing a representative voice of the stakeholders affected by decisions of the Authority.*

Knowing the comprehensiveness and enormority of this undertaking, it is my hope that during my turn my participation will be beneficial in this undertaking.

2. Given that this has been a year of transition for the authority, what are the most important challenges facing the board? What are the most important issues that the CSA should be discussing and acting upon?

CSA is embarking on a new era, with the reorganization of the California Department of Corrections and Rehabilitation (CDCR). CSA is in the process of developing selection and hiring standards for state correctional officers, providing oversight in the review and revision of state Title 15 regulations, and providing valuable information to the agency with its ongoing staff safety evaluations at the state prisons and juvenile justice facilities. All of this work is in addition to the services that are provided to the 576 local adult and juvenile detention facilities throughout the state.

The greatest challenge facing CSA is maintaining its level of service to its constituents, shareholders and stakeholders, while assuming these new responsibilities. CSA should continue to collaborate with constituents, shareholders and stakeholders, and to assume a

leadership role to map the course for the future of local and state corrections in California.

3. How have you prepared for these new responsibilities? How does the staff assist you in carrying them out? Do you believe you get the help you need or is there additional assistance that should be made available?

Because of my current position with the Sacramento County Probation Department, I was already familiar with the Authority's role and function. As I prepared for this position I studied and reviewed legislature and literature relevant to the Authority and its functions. When necessary or upon my request, the staff supply me with the necessary information to answer questions whether it is via phone, written correspondence or in person. At this time, I believe I get the help I need. However, with additional duties that arise I can see how additional assistance could be need and make available.

4. The CSA consists of 19 members, 14 of whom are appointed by the governor. Largely due to a lack of a quorum, the board has met only once in the past year although the Web site states it meets bimonthly. A meeting scheduled this month was cancelled due to a limited agenda, though three other meetings are planned for later this year. In the absence of meetings, how have you communicated with staff and kept informed of the board's work? How does the board determine when to meet?

I have frequent contact with the Deputy Directors assigned to the Corrections Standards Authority. They keep me abreast of issues that are relevant to me as a member of the Authority.

<u>Local Facility Responsibility</u>:

5. How often does a county jail or juvenile hall get inspected by your staff? Are you able to visit facilities and familiarize yourself with conditions? If so, what have you learned? If not, how do you familiarize yourself with the issues?

CSA staff conduct inspections at local adult and juvenile facilities once every two years (biennial inspection), in accordance with Penal Code § 6031.1 and Welfare and Institutions Code § 209 and 885. In addition to these required biennial inspections, CSA provide ongoing technical assistance to facilities, based upon their needs (e.g.; onsite construction project review, provide training to staff, and assist agencies with resolving compliance issues).

As an Authority member, we are able to visit facilities and familiarize ourselves with their conditions. I have not visited any facilities, however as mentioned the staff keep me updated with relevant issues.

6. Do you believe the CSA has sufficient authority to ensure that needed changes are made after inspection? Do you believe you need additional enforcement tools?

Background Information: Titles 15 and 24 regulations for adult and juvenile local detention facilities are not mandatory. Therefore, CSA can find a facility in non-compliance with these regulations, but it does not have statutory authority to compel an agency to comply with all of the standards. If these regulations were mandated by the state, counties could file a SB90 claim (originally, know as the Property Tax Relief Act of 1972), to receive cost reimbursement for a state mandated program. In the absence of a state mandated program, CSA forges a working relationship with the counties to assist them with complying with the regulations.

Knowing this information, the question is whether the responsibility of ensuring compliance, is the financial obligation of the state or counties. If the California Standards Authority would have the authority to sanction facilities that are not in compliance, this will be a major financial responsibility for the state, along with the long legal procedure necessary to give the them statutory authority . A long legal process would be effect the timeliness of correcting issues that arise in the facilities, along with time for the corrections to be approved. That being said, as a board member having the tools to statutory authority to sanction non-compliance, is not beneficial time.

7. In a taxpayer lawsuit filed in April 2006, the Prison Law Office states that, "The CSA has abdicated its oversight duties and allowed counties to operate juvenile detention facilities that violate state law." It alleges that the authority fails to be tough on counties that repeatedly violate the law. The suit alleges that the authority fails to disclose violations to counties, require plans to fix the problems, and identify facilities that are "unsuitable for the confinement of minors."

Welfare and Institutions Code § 209 requires CSA to conduct biennial inspections of each jail, juvenile hall, lockup, or special purpose juvenile hall, if minors were confined for more than 24 hours, during the preceding calendar year. This statute also requires CSA to notify the operator of the facility of any compliance issues with Titles 15 and 24 California Code of Regulations (CCR). CSA meets this statutory obligation by conducting biennial inspections of every juvenile detention facility in this state, and providing a written report to the facility administer, county chief administrative officer, chairperson of the county board of supervisors, county grand jury, juvenile justice commission or juvenile probation commission, and the presiding court judge, of its findings including regulation specific compliance issues.

If one or more compliance issues have been identified at the juvenile facility, the administrator is required to submit a Corrective Action Plan (CAP) 60 days from the date of receipt of the report [Welfare and Institutes Code § 209(d)]. The CAP shall outline how the juvenile hall, special purpose juvenile hall, law enforcement facility, or jail plans to correct the issue of noncompliance, and the board shall either approve or deny the submitted CAP. Welfare and Institutions Code § 209(e) supersedes § 209(d), if ..."the noncompliance arises from sustained occupancy levels that are above the

population capacity permitted by applicable minimum standards, the juvenile hall shall be unsuitable for the confinement of minors if the board or judge of the juvenile court determines that conditions in the facility pose a serious risk to the health, safety, or welfare of minors confined in the facility. In making its determination of suitability, the board or the judge of the juvenile court shall consider, in addition to the noncompliance with minimum standards, the totality of conditions in the juvenile hall, including the extent and duration of overpopulation as well as staffing, program, physical plant, and medical and mental health conditions in the facility. The Board of Corrections (CSA) may develop guidelines and procedures for its determination of suitability in accordance with the subdivision and to assist counties in bringing their juvenile halls into full compliance with applicable minimum standards."

Please describe what steps the CSA plans to take to respond to the lawsuit.

CSA is currently working with the California Department of Corrections and Rehabilitation Legal Division and the Office of the Attorney General to address the legal action by the Prison Law Office.

8. CSA is responsible for ensuring the education of minors in county juvenile lock-ups and the compliance of local officials with state regulations. First, a 1998 regulation required dedicated classroom space that was limited to 20 minors per class, according to an authority deputy director. However, existing dayrooms that were used for classes were "grandfathered" under CYA regulations. As part of their inspections, authority officials also are supposed to determine if minors are enrolled in classes within three days of admission, check for minors who are kept out of class for disciplinary reasons, or ensure there are enough teachers. What role should the board play in ensuring better educational opportunities for the incarcerated? If you find that a county is not meeting its obligation to provide adequate room for education classes, what steps should the authority board take?

Background Information: CSA staff inspects juvenile facilities for compliance with Title 15, Section 1370, Education Program. During the Juvenile Regulation Revision Process (biennial review of Titles 15 and 24 for local juvenile facilities), this standard is thoroughly discussed and reviewed by the Education and Programs Workgroup (multidisciplinary team comprised of juvenile facility managers, juvenile school principal, youth advocate attorney, and administrator for the office of education) to ensure that this regulation addresses the Education Code and provides minors with education needs that meet the community standard.

If a county is not meeting it's obligation to provide adequate room for education classes should steps should be the steps outlined in Section 209(e) of the Welfare and Institutions Code:) Where a juvenile hall is not in compliance with one or more of the minimum standards for juvenile facilities adopted by the Board of Corrections under Section 210, and where the noncompliance arises from sustained occupancy levels that are above the population capacity permitted by applicable minimum standards, the juvenile hall

shall be unsuitable for the confinement of minors if the board or the judge of the juvenile court determines that conditions in the facility pose a serious risk to the health, safety, or welfare of minors confined in the facility. In making its determination of suitability, the board or the judge of the juvenile court shall consider, in addition to the noncompliance with minimum standards, the totality of conditions in the juvenile hall, including the extent and duration of overpopulation as well as staffing, program, physical plant, and medical and mental health care conditions in the facility. The Board of Corrections may develop guidelines and procedures for its determination of suitability in accordance with this subdivision and to assist counties in bringing their juvenile halls into full compliance with applicable minimum standards. This subdivision shall not be interpreted to exempt a juvenile hall from having to correct, in accordance with the provisions of subdivision (d), any minimum standard violations that are not directly related to overpopulation of the facility.

State Facility Responsibility

9. Sec. 6030 of the Penal Code requires CSA to set minimum standards for state and local correctional facilities by January 1, 2007. Is the CSA on schedule to meet this deadline? What is the status of your work on these standards?

CDCR Regulation and Policy Management Branch (RPMB) is responsible for establishing and revising Title 15 regulations for the Division of Adult Institutions and the Policy, Procedures, Programs and Regulations Unit is accountable for the Division of Juvenile Justice. To comply with the statutory change to Penal Code § 6030, these functions are in the process of being transferred to CSA. CSA has an ongoing process for reviewing and revising local adult and juvenile standards (e.g.; revisions to the adult regulations were completed in 2005 and 2006; juvenile regulations are currently under review). Revisions to State Title 15 regulations for prisons are awaiting signoff for submission to the Secretary of State, and juvenile regulations of the Division of Juvenile Justice are currently under review.

10. At the May 2005 meeting of the Board of Corrections, a request was made to establish a panel to examine staff safety issues at state prisons and juvenile detention facilities. The reviews of four juvenile facilities have been posted on the Division of Juvenile Justice Web site. Have you done any follow up to determine if your recommendations have been implemented? Have you finished reviewing any adult facilities? When will those findings be made public?

At the March 16, 2006 CSA Board meeting, Mr. Jay Aguas, Assistant Director for the Division of Juvenile presented an update on DJJ's CAP. Mr. Aguas stated that the DJJ corrective action plan is three parts: practice, facilities, and relationships. Practice is how things are documented and how staff conducted them on a daily basis. The second part relates to facilities such as maintenance issues with old facilities, transportation vehicles that have too many miles on them, etc. The last part is the relationship with education, treatment of wards, etc.

Mr. Aguas informed the board that there is a five-year plan relative to the reform efforts including a transition to smaller housing units. In the short term, the building of enough modern, state-of-the-art facilities for juvenile offenders is not realistic, consequently the existing facilities will continue to be used but substantial changes will occur.

Mr. Warner, Chief Deputy Secretary for DJJ, stated that future updates would be given to the board on the monitoring of the corrective action plan. In terms of the facilities, DJJ is in the process of developing design requirements but at best it will be 2009-2010 before construction begins. DJJ will look into modular space including space for small groups to enhance the rehabilitative environment in each of the facilities. In addition, DJJ will be introducing new services and new staff to work in smaller housing units.

Staff Safety Evaluations have been conducted at three state prisons, and the CAP's are currently under review by the Division of Adult Institutions. The expected release date for these reports is unknown to the CSA. Have been reviewed, and they are currently being reviewed by Adult Institutions. The state prison staff safety evaluations are currently under review by Adult Institutions. The Division of Juvenile Justice has a timeline for implementing the recommendations, which is available upon request.

Grant Administration

11. The authority administers various grant programs. In the coming fiscal year it proposes to oversee $35.9 million in federal grant programs. Also, the Governor in his May budget revision proposed $50 million in grants to curb recidivism among mentally ill offenders. What role does the board play in determining where grant funds are spent?

The board is the final authority on all grants awarded through a competitive Request for Proposals (RFP) process. The board's role begins with appointing an Executive Steering Committee (ESC) comprised of subject matter experts in the field and approving a timeline of activities recommended by staff. A board member chairs the ESC, other members typically serve on it, and every effort is made to appoint ESC members representing small, medium and large counties. The ESC develops recommendations for the board's consideration on various RFP requirements (e.g., establishing a "cap" on the amount of funds that can be requested, determining whether applicants may submit more than one proposal), and the proposal evaluation criteria (including the weight associated with each rating factor). ESC members rate the proposals pursuant to the approved criteria and make funding recommendations to the board based on the results of the evaluation process. The overarching goal of the competitive RFP processes administered by the board is to create a "level playing field" for all potential applicants.

What oversight role do board members play to ensure that these funds are spent appropriately?

The board delegates grant management and oversight responsibilities to its staff, which conduct on-site monitoring visits at least once a year with each grantee and require all grantees to submit progress reports. A key component of the on-site monitoring visits is to review documentation the grantee must keep on file, in accordance with the grant agreement, in order to maintain an adequate audit trail and substantiate expenditures claimed on invoices submitted to the board. The quarterly progress reports, which address issues related to project expenditures and activities, serve as another tool for staff to help ensure that grantees are expending funds appropriately. Board members stay apprised of grant-related issues and activities through updates provided by staff at the board meetings.

12. CSA administers the federal Juvenile Accountability Block Grants. Historically these awards have been made to local jurisdictions which, as you know, handle all but a very small percentage of juvenile offenders. This year, a decision was made to award $7 million in JABG funding to the Division of Juvenile Justice. Please describe in detail the basis for the board's action awarding this funding to DJJ instead of local grantees. In addition, please describe how the JABG award to DJJ will fit into the Program Purpose Areas within the JABG program and, specifically, which purpose areas were chosen by DJJ as a grantee. Finally, please attach a copy of the successful DJJ application for JABG funding to your response to this letter.

By way of background, the Juvenile Accountability Block Grant (JABG) awards in California have historically been directed to both state and local entities. The former California Youth Authority, known today as the Division of Juvenile Justice (DJJ), is noted among other state agencies as being a prior recipient of this federal funding. The current laws governing JABG under the Omnibus Crime Control and Safe Streets Act, as well as the original enacting legislation, allow for funding to both state and local units of government. Further, federal formula-based direct allocations to local government continue on an annual basis per JABG guidelines, without deviation.

There exists within DJJ, well documented, serious, some life-threatening, and widespread deficiencies found within the institutions dealing with the state juvenile justice population in the California Department of Corrections and Rehabilitation (CDCR). Remedial plans developed following the Farrell Court Settlement (Farrell v. Hickman) require an abundance of resources. To support some of these critical needs, and address a portion of the deficiencies noted by our own CSA staff in the Staff Safety Evaluations performed at some of the DJJ institutions, this $7 million was awarded to further CDCR's juvenile justice reform efforts. DJJ's plan for JABG funding helps position CDCR for continuing the reform efforts as an on-going commitment to public safety, and to the basic welfare and rehabilitation needs of our delinquent youth statewide.

DJJ's plan for JABG spending, which our Board approved and which serves as the application for JABG funding, is attached. Following JABG guidelines, this proposal clearly outlines each of the Program Purpose Areas being addressed with the funding.

CALIFORNIA LEGISLATURE

MEMBERS
JIM BATTIN
VICE-CHAIR
ROY ASHBURN
DEBRA BOWEN
GILBERT CEDILLO

GREGORY SCHMIDT
SECRETARY OF THE SENATE
NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

May 18, 2006

Gary S. Penrod

Dear Mr. Penrod:

As you know, your appointment as a member of the Corrections Standards Authority (CSA) is subject to confirmation by the Senate. We have prepared the following questions to which we would appreciate your written responses. We request that you provide us with your responses by June 2nd. My staff will contact you to schedule an interview to take place at a time convenient for you in early June.

Mission

The CSA was known formerly as the Board of Corrections. It has had long-standing responsibility for setting standards and conducting inspections at local jails and juvenile halls, regulating the selection and training of local correctional staff, and administering a variety of federal and state grants to local correctional facilities. As part of the governor's corrections' reorganization, on July 1, 2005, the board became the Corrections Standards Authority. Section 6030 of the Penal Code now gives the CSA added authority for setting minimum standards at state correctional facilities and sets a deadline of January 1, 2007, for this activity. CSA also assumed the additional mission of the Commission on Correctional Peace Officers' Standards and Training to improve the professionalism of correctional staff in state institutions.

1. *Please provide a brief statement of your goals. What do you hope to accomplish during your term on the Corrections Standards Authority?*

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2. *Given that this has been a year of transition for the authority, what are the most important challenges facing the board? What are the most important issues that the CSA should be discussing and acting upon?*

3. *How have you prepared for these new responsibilities? How does the staff assist you in carrying them out? Do you believe you get the help you need or is there additional assistance that should be made available?*

4. *The CSA consists of 19 members, 14 of whom are appointed by the governor. Largely due to a lack of a quorum, the board has met only once in the past year although the Web site states it meets bimonthly. A meeting scheduled this month was cancelled due to a limited agenda, though three other meetings are planned for later this year. In the absence of meetings, how have you communicated with staff and kept informed of the board's work? How does the board determine when to meet?*

Local Facility Responsibility

5. *How often does a county jail or juvenile hall get inspected by your staff? Are you able to visit facilities and familiarize yourself with conditions? If so, what have you learned? If not, how do you familiarize yourself with the issues?*

6. *Do you believe the CSA has sufficient authority to ensure that needed changes are made after inspection? Do you believe you need additional enforcement tools?*

7. *In a taxpayer lawsuit filed in April 2006, the Prison Law Office states that, "The CSA has abdicated its oversight duties and allowed counties to operate juvenile detention facilities that violate state law." It alleges that the authority fails to be tough on counties that repeatedly violate the law. The suit alleges that the authority fails to disclose violations to counties, require plans to fix the problems, and identify facilities that are "unsuitable for the confinement of minors."*

 Please describe what steps the CSA plans to take to respond to the lawsuit.

8. *CSA is responsible for ensuring the education of minors in county juvenile lock-ups and the compliance of local officials with state regulations. First, a 1998 regulation required dedicated classroom space that was limited to 20 minors per class, according to an authority deputy director. However, existing dayrooms that were used for classes were "grandfathered" under CYA regulations. As part of their inspections, authority officials also are supposed to determine if minors are enrolled in classes within three days of admission, check for minors who are kept out of class for disciplinary reasons, or ensure there are enough teachers.*

What role should the board play in ensuring better educational opportunities for the incarcerated? If you find that a county is not meeting its obligation to provide adequate room for education classes, what steps should the authority board take?

State Facility Responsibility

9. *Sec. 6030 of the Penal Code requires the CSA to set minimum standards for state and local correctional facilities by January 1, 2007. Is the CSA on schedule to meet this deadline? What is the status of your work on these standards?*

10. *At the May 2005 meeting of the Board of Corrections, a request was made to establish a panel to examine staff safety issues at state prisons and juvenile detention facilities. The reviews of four juvenile facilities have been posted on the Division of Juvenile Justice Web site. Have you done any follow up to determine if your recommendations have been implemented? Have you finished reviewing any adult facilities? When will those findings be made public?*

Grant Administration

11. *The authority administers various grant programs. In the coming fiscal year it proposes to oversee $35.9 million in federal grant programs. Also, the governor in his May budget revision proposed $50 million in grants to curb recidivism among mentally ill offenders. What role does the board play in determining where grant funds are spent? What oversight role do board members play to ensure that these funds are spent appropriately?*

12. *CSA administers the federal Juvenile Accountability Block Grants. Historically, these awards have been made to local jurisdictions which, as you know, handle all but a very small percentage of juvenile offenders. This year, a decision was made to award $7 million in JABG funding to the Division of Juvenile Justice. Please describe in detail the basis for the board's action awarding this funding to DJJ instead of to local grantees. In addition, please describe how the JABG grant award to DJJ will fit into the Program Purpose Areas within the JBAG program and, specifically, which purpose areas were chosen by DJJ as a grantee. Finally, please attach a copy of the successful DJJ application for JABG funding to your responses to this letter.*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814. You may fax them to 916 445-0596 or email them to nettie.sabelhaus@sen.ca.gov. Thank you very much for your help. I look forwarding to discussing these important issues with you.

Sincerely,

DON PERATA

DP:MG:dc

cc: Corrections Standards Authority

5-30-06

Senate Rules Committee

Thank you for your consideration of my confirmation to the Corrections Standards Authority (CSA) and the questions which you have asked in your correspondence dated May 18, 2006.

First, I must say since having been appointed by the Governor for only a short time I've yet to attend a CSA meeting, however, I have read all the material given to me for new members and have visited the CSA Headquarters in Sacramento. I have talked to CSA employees about my role and I have also met and talked with current and past board members to discuss the function of the CSA.

Below are my answers to questions 1-12, but I'm afraid I am unable to answer some of them because, as I mentioned, I have not attended a meeting to date.

Thank you.

Gary Penrod

1. Give constructive input (from a local Sheriff's point of view) into the future of the state's correctional system.

2. a) Learn more about the new responsibilities. b) Jail overcrowding.

3. a) I read all supplied information and have talked to other board members. b) N/A c) Adequate assistance.

4. a) I have communicated with staff members and people who have attended meetings in the past. b) Unknown

MAY 30 '06

May 30, 2006
Senate Rules Committee
Page Two

5. If this is referring to facilities in my control, I visit my four main jail facilities as often as possible.

6. Unknown.

7. Having not been to a meeting I am not familiar with the lawsuit.

8. Unable to answer (have not attended a meeting).

9. Unable to answer (have not attended a meeting).

10. Unable to answer (have not attended a meeting).

11. Even though I have not attended a meeting, hopefully CSA determines which programs are the most beneficial and has some system in place to assure that the grant recipients are spending the grant money appropriately.

12. Unable to answer (have not attended a meeting).

MAY 30

CALIFORNIA LEGISLATURE

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ROY ASHBURN
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GILBERT CEDILLO



GREGORY SCHMIDT
SECRETARY OF THE SENATE
NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

May 18, 2006

Michael F. Prizmich

Dear Mr. Prizmich:

As you know, your appointment as a member of the Corrections Standards Authority (CSA) is subject to confirmation by the Senate. We have prepared the following questions to which we would appreciate your written responses. We request that you provide us with your responses by June 2nd. My staff will contact you to schedule an interview to take place at a time convenient for you in early June.

Mission

The CSA was known formerly as the Board of Corrections. It has had long-standing responsibility for setting standards and conducting inspections at local jails and juvenile halls, regulating the selection and training of local correctional staff, and administering a variety of federal and state grants to local correctional facilities. As part of the governor's corrections' reorganization, on July 1, 2005, the board became the Corrections Standards Authority. Section 6030 of the Penal Code now gives the CSA added authority for setting minimum standards at state correctional facilities and sets a deadline of January 1, 2007, for this activity. CSA also assumed the additional mission of the Commission on Correctional Peace Officers' Standards and Training to improve the professionalism of correctional staff in state institutions.

1. *Please provide a brief statement of your goals. What do you hope to accomplish during your term on the Corrections Standards Authority?*

2. *Given that this has been a year of transition for the authority, what are the most important challenges facing the board? What are the most important issues that the CSA should be discussing and acting upon?*

3. *How have you prepared for these new responsibilities? How does the staff assist you in carrying them out? Do you believe you get the help you need or is there additional assistance that should be made available?*

4. *The CSA consists of 19 members, 14 of whom are appointed by the governor. Largely due to a lack of a quorum, the board has met only once in the past year although the Web site states it meets bimonthly. A meeting scheduled this month was cancelled due to a limited agenda, though three other meetings are planned for later this year. In the absence of meetings, how have you communicated with staff and kept informed of the board's work? How does the board determine when to meet?*

Local Facility Responsibility

5. *How often does a county jail or juvenile hall get inspected by your staff? Are you able to visit facilities and familiarize yourself with conditions? If so, what have you learned? If not, how do you familiarize yourself with the issues?*

6. *Do you believe the CSA has sufficient authority to ensure that needed changes are made after inspection? Do you believe you need additional enforcement tools?*

7. *In a taxpayer lawsuit filed in April 2006, the Prison Law Office states that, "The CSA has abdicated its oversight duties and allowed counties to operate juvenile detention facilities that violate state law." It alleges that the authority fails to be tough on counties that repeatedly violate the law. The suit alleges that the authority fails to disclose violations to counties, require plans to fix the problems, and identify facilities that are "unsuitable for the confinement of minors."*

 Please describe what steps the CSA plans to take to respond to the lawsuit.

8. *CSA is responsible for ensuring the education of minors in county juvenile lock-ups and the compliance of local officials with state regulations. First, a 1998 regulation required dedicated classroom space that was limited to 20 minors per class, according to an authority deputy director. However, existing dayrooms that were used for classes were "grandfathered" under CYA regulations. As part of their inspections, authority officials also are supposed to determine if minors are enrolled in classes within three days of admission, check for minors who are kept out of class for disciplinary reasons, or ensure there are enough teachers.*

What role should the board play in ensuring better educational opportunities for the incarcerated? If you find that a county is not meeting its obligation to provide adequate room for education classes, what steps should the authority board take?

State Facility Responsibility

9. *Sec. 6030 of the Penal Code requires the CSA to set minimum standards for state and local correctional facilities by January 1, 2007. Is the CSA on schedule to meet this deadline? What is the status of your work on these standards?*

10. *At the May 2005 meeting of the Board of Corrections, a request was made to establish a panel to examine staff safety issues at state prisons and juvenile detention facilities. The reviews of four juvenile facilities have been posted on the Division of Juvenile Justice Web site. Have you done any follow up to determine if your recommendations have been implemented? Have you finished reviewing any adult facilities? When will those findings be made public?*

Grant Administration

11. *The authority administers various grant programs. In the coming fiscal year it proposes to oversee $35.9 million in federal grant programs. Also, the governor in his May budget revision proposed $50 million in grants to curb recidivism among mentally ill offenders. What role does the board play in determining where grant funds are spent? What oversight role do board members play to ensure that these funds are spent appropriately?*

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Sincerely,

DON PERATA

DP:MG:dc

cc: Corrections Standards Authority

OFFICE OF
SHERIFF - CORONER

MICHAEL F. PRIZMICH
SHERIFF - CORONER

May 25, 2006

Senate Rules Committee
Honorable Don Perata, Chairman
State Capital
Room 420
Sacramento, CA. 95814-4900

Dear Chairman Perata:

Below you will find my response to your questions regarding my appointment as a member of the Corrections Standards Authority.

Mission

1. My statement of goals is as follows:

I have received my nomination to the Corrections Standards Authority with responsibility of representing county jail facilities with less than 200,000 county populations. To that end my individual focus will be to bring a voice to smaller county jails in our state. Issues of over crowding, finances, violence, education are problems throughout the state jail system but the impact to smaller facilities and communities has a greater negative result than in larger facilities, With that said I must also do what's right for the entire state jail system and can't or will not hold my position with blinders on to the broader state issues.

2. Year of transitions and challenges.

With a number of new board members, our first issue will be achieving comfort as individuals and as a group. Following that sort of adjustment, our effort should be to define how best to face the challenges for our own constituency, than as a board.

3. Preparing for responsibilities.

I've always found the staff very helpful and virtually anything we have asked for has been provided. I believe the difficult process will be to identify the issues in such a way so that we can move in a positive direction. Based on my past service on this board I believe more personal time commitment is needed.

4. Meeting and communications.

Both the staff and board members have utilized the Internet and E-mail to correspond in addition to phone contact. Normally meetings are scheduled every other month.

Local Facility Responsibility

5. How often jail is inspected.

The staff at Corrections Standards Authority is constantly inter acting with county jails and juvenile facilities and as you know there is an annual report to the state on how jails are performing. The reports are open to the public and completed in a comprehensive manner that makes it easy to familiarize oneself with the facilities in the state.

700 COURT STREET • JACKSON, CA 95642 • (209) 223-6500 • FAX (209) 223-1609

ADMINISTRATION (209)223-6515 • EMERGENCY SERVICES (209)223-6384 • CIVIL (209)223-6544
CORONER (209)223-6754 • JAIL (209)223-6522

MAY 25 2006

6. Changes after inspection.

I don't believe the Authority has direct authority to impact change but we can certainly cause influence that effects change.

7. Taxpayer Lawsuit.

I don't concur that violators are ignored or under reported. Response will be completed by counsel after consultation with the Authority in closed session.

8. Education of Minors.

I believe the Authority can bring pressure to effectively and positively improve education needs. The Authority can also communicate pressure via grant funding.

State Facility Responsibility

9. Minimum Standard for Correctional Facilities.

I believe these exist a framework to achieve goals by January 2007. Obviously the staff will be tasked with this responsibility.

10. Safety Issues.

If I am not mistaken the last Corrections Standard Authority this issue was again brought up clearly without a quorum it has been difficult to achieve concrete results.

Grant Administration

11. Oversight Role.

Grants are awarded by the Authority and reports are given back on the progress, therefore it is incumbent on the individual authority members to track the information that is being reported.

12. JABG Funding.

If my recollection is correct the change was made to see if deliverable could be better achieved via a different funding administrator. Beyond that I cannot respond with any accuracy to your remaining question.

Thank you for the opportunity to respond to your questions and concerns.

Sincerely,

MICHAEL F. PRIZMICH
Sheriff-Coroner

MFP/ep

Cal Remington
Responses

1. Please provide a brief statement of your goals. What do you hope to accomplish during your term on the Corrections Standards Authority?

The CSA plays an important role in local corrections throughout California. Setting standards and conducting inspections in local jails and juvenile halls is an extremely important function and provides the checks and balances necessary to ensure that those we incarcerate in this State are provided with appropriate care, humane housing and, in the case of juveniles, the necessary programming and education to assist them in returning to their homes and communities better equipped to become productive members of their school and community. Without this oversight, I am convinced we would have little uniformity throughout the State and our local institutions would not have the resources necessary to function at an effective and appropriate level.

I feel that for CSA to be most effective, it must have the support of local corrections and must have involvement of policy makers from County governments. If County officials see CSA as just another State agency whose primary interest is with the State and not County government, a historically viable and productive organization may be lost. One of my primary goals is to help provide credibility of the organization to those in local governments that are directly affected by CSA decisions.

2. Given that this has been a year of transition for the authority, what are the most important challenges facing the board? What are the most important issues that the CSA should be discussing and acting upon?

CSA is facing a number of challenges related to the reorganization of CDCR and the added responsibilities given to CSA. As an example, setting standards for state correctional facilities is important and necessary. However, it is a huge responsibility and has the potential of shifting much of the organization's focus on local corrections to state corrections. Maintaining the relationships with local government will also be more difficult due to the changes in the organization, as well as dramatic change in the organization's leadership. To regain credibility with local officials, it is necessary for the board to meet on a regular basis to allow for public input and discussion and to allow the board to make decisions in a timely and appropriate manner. CSA has very dedicated and professional staff who are highly motivated. This is a real plus, however the organization must become more stable this year to enable the organization to maintain the credibility and support it has enjoyed historically.

3. How have your prepared for these new responsibilities? How does the staff assist you in carrying them out? Do you believe you get the help you need or is there additional assistance that should be made available.

JUN - 7

I think I am well prepared for these new responsibilities. I have been involved in the board's business for many, many years as a local official and I have been a member of the board, both BOC and CSA, for over two years. The staff at CSA have been extremely supportive and helpful in assisting me in carrying out my duties.

4. The CSA consists of 19 members, 14 of whom are appointed by the governor. Largely due to a lack of a quorum, the board has met only once in the past year although the Web site states it meets bimonthly. A meeting scheduled this month was canceled due to a limited agenda, though three other meetings are planned for later this year. In the absence of meetings, how have you communicated with staff and kept informed of the board's work? How does the board determine when to meet?

During this period of time I have attempted to maintain an open communication with CSA staff through phone calls and emails. This however is a problem when the board does not meet on a regular basis. The board has a regular schedule for meeting that is published and would normally occur every other month. Meetings are scheduled around the state to allow greater access to interested parties. In addition to regularly scheduled meetings, board members are involved in participating on or heading up special task forces and, on occasion, holding public hearings.

This has been a problem this past year as there has not been enough members to constitute a quorum. It is my understanding that the board is now in a position to meet regularly as scheduled.

5. How often does a county jail or juvenile hall get inspected by your staff? Are you able to visit facilities and familiarize yourself with conditions? If so, what have you learned? If not, how do you familiarize yourself with the issues?

CSA staff must inspect local facilities biannually or more often when needed. These staff are specialists as it relates to understanding and applying the adopted state rules and regulations. CSA staff have also trained local juvenile justice and delinquency prevention members to properly inspect the juvenile facilities in their jurisdiction. Presiding Judges of the Juvenile Court are also required by statute to inspect the local juvenile facilities on an annual basis. Additionally, some counties have self-inspection teams that are made up of members of both the juvenile justice system and the public, and provide inspections on an annual basis. For counties such as Ventura, Santa Clara and Santa Cruz, the self-inspection training was provided by the Youth Law Center in conjunction with the Annie E. Casey Foundation.

As the Chief Probation Officer for Ventura County, and as a member of the board for over two years, I have had the opportunity to visit many institutions and am aware of Title 15 and Title 24 regulations and how they apply. I've also in the past acted as the superintendent of the Ventura County Juvenile Hall. What I have learned over a period of time is that institutions have a very complex and dynamic nature that is constantly changing. They're difficult to manage and potential volatile. Relationships are often difficult to develop between staff and those in custody,

but ultimately, positive relationships between and staff and youth provide the best opportunity for young people to make appropriate changes during their periods of incarceration. These relationships can best be fostered with appropriate levels of staffing, appropriate and ongoing training for staff and programs that are based on "best practices." Strong educational and training programs are a must, as well as an appropriate use of outside contract providers and volunteers. I've also learned it's important to have an objective booking criteria that allows for the detention of those minors that are in need of custody for the protection of themselves or others, and does not needlessly detain those who can be safely kept at home. To accomplish this there must also be alternatives to detention for those in need of some external controls, but not in need of 24-hour secure detention.

Following the decision to incarcerate it is important to have a system to classify the individual for determining housing and then assessment of the individual to determine the case plan for the period of incarceration.

6. Do you believe the CSA has sufficient authority to ensure that needed changes are made after inspection? Do you believe you need additional enforcement tools.

I think generally that the enforcement tools are satisfactory. However, I do believe that this is a question that needs to be discussed and perhaps debated. There are certainly some critics who feel that the CSA would get better compliance by using stronger enforcement tools. The question, again, is worthy of discussion, but I'm not sure that that is the answer.

7. In a taxpayer lawsuit filed in April 2006, the Prison Law Office states that, "The CSA has abdicated its oversight duties and allowed counties to operate juvenile detention facilities that violate state law." It alleges that the authority fails to be tough on counties that repeatedly violate the law. The suit alleges that the authority fails to disclose violations to counties, require plans to fix the problems, and identify facilities that are "unsuitable for the confinement of minors."

Please describe what steps the CSA plans to take to respond to the lawsuit.

The CSA board has not met since the Prison Law Office lawsuit was filed in April of this year. I assume these questions will be discussed at our July meeting, however I believe there are two issues. The first, of course, is how CSA responds to the lawsuit. The second is more of a policy discussion regarding the allegations of the lawsuit and whether or not there are policy issues that need to be addressed.

8. CSA is responsible for ensuring the education of minors in county juvenile lock-ups and the compliance of local officials with state regulations. First, a 1998 regulation required dedicated classroom space that was limited to 20 minors per class, according to an authority deputy director. However, existing dayrooms that were used for classes were "grandfathered" under CYA regulations. As part of their inspections, authority officials also are supposed to determine if

minors are enrolled in classes within three days of admission, check for minors who are kept out of class for disciplinary reasons, or ensure there are enough teachers.

It is important for the board to reinforce the importance of educational opportunities for those incarcerated. Failure to provide adequate education is not acceptable and those jurisdictions who fail to meet their obligations need to be held accountable. Ultimately, an institution will be held "unsuitable for the confinement of minors" if compliance is not achieved. On the other hand, if there are institutions that have been "grandfathered" under CYA regulations and classrooms are held in day rooms, CSA staff must be able to ensure that adequate education continues to take place. Creativity can go a long way in jurisdictions that may be challenged with problems of space or other limitations. Regardless, the educational program must still be viable.

9. Sec. 6060 of the Penal Code requires the CSA to set minimum standards for state and local correctional facilities by January 1, 2007. Is the CSA on schedule to meet this deadline? What is the status of your work on these standards?

It is my understanding that CSA as of March 2006 was on schedule to meet this deadline. I think this is an important role for CSA as I feel minimum standards for state facilities should have been set many years ago. In talking to CSA staff, they are able and willing to take on this challenge. The recent revision of minimum standards for local juvenile facilities will meet the deadline.

10. At the May 2005 meeting of the Board of Corrections, a request was made to establish a panel to examine staff safety issues at state prisons and juvenile detention facilities. The reviews of four juvenile facilities have been posted on the Division of Juvenile Justice Web site. Have you done any follow up to determine if your recommendations have been implemented? Have you finished reviewing any adult facilities? When will those findings be made public?

The lack of meetings this past year has made it very difficult to stay on top of the many issues before the board. I have received informal feedback that the facility reviews have been made. However, I do not know if the review has been completed or when these findings will be made public. I assume more information will follow at the next meeting.

11. The authority administers various grant programs. In the coming fiscal year it proposes to oversee $35.9 million in federal grant programs. Also, the governor in his May budget revision proposed $50 million in grants to curb recidivism among mentally ill offenders. What role does the board play in determining where grant funds are spent? What oversight role do board members play to ensure that these funds are spent appropriately?

Based on my experience in recent years, I believe the CSA, previously BOC, has done a tremendous job in allocating and overseeing grant funds. Distribution of grant funds on a competitive basis is always difficult, as there are always more requests than funds available. Consequently, it is always difficult for those who do not receive the funds and most importantly,

there needs to be a feeling of objectivity and fairness in the process. I think this organization has done an outstanding job in recent years in having a transparent objective process that has resulted in few appeals or complaints by those who did not receive funds. I believe this is because the board involves outsiders in the process, establishes executive steering committees to oversee the process and ensures that the rating procedures are statistically valid and defendable. If the governor's $50 million in grants to curb recidivism among mentally-ill offenders is approved by the legislature, this will be an exciting initiative that is needed in both the adult and juvenile system. I'm confident that CSA will be able to set up a process that is fair to all and is seen as being objective by all who apply.

12. CSA administers the federal Juvenile Accountability Block Grants. Historically, these awards have been made to local jurisdictions which, as you know, handle all but a very small percentage of juvenile offenders. This year, a decision was made to award $7 million in JABG funding to the Division of Juvenile Justice. Please describe in detail the basis for the board's action awarding this funding to DJJ instead of to local grantees. In addition, please describe how the JABG grant award to DJJ will fit into the Program Purpose Areas within the JABG program and, specifically, which purpose areas were chosen by DJJ as a grantee. Finally, please attach a copy of the successful DJJ application for JABG funding to your responses to this letter.

At the March 16, 2006 meeting, the board approved staff recommendations regarding the award of $7 million to the Department of Juvenile Justice. The initial decision was not made with the board's input or consideration of these funds. We were told that due to the lack of meetings the previous year, this item could not be processed through normal channels; further, that there was an emergency clause allowing the secretary of CDCR to make this decision and that time did not permit a revisiting of this item by the board. If the board had met on a regular basis, I do not think this would have occurred.

Calvin C. Remington
Director/Chief Probation Officer
Ventura County Probation Agency
800 S. Victoria Ave., L#3200
Ventura CA 93009
805/654-2100
805/654-3544 (fax)

PLEASE NOTE:
CORRECT E-MAIL ADDRESS IS calvin.remington@ventura.org
<mailto:calvinremington@ventura.org>

CALIFORNIA LEGISLATURE

MEMBERS
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SECRETARY OF THE SENATE
NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

May 18, 2006

Mimi H. Silbert, Ph.D.

Dear Dr. Silbert:

As you know, your appointment as a member of the Corrections Standards Authority (CSA) is subject to confirmation by the Senate. We have prepared the following questions to which we would appreciate your written responses. We request that you provide us with your responses by June 2nd. My staff will contact you to schedule an interview to take place at a time convenient for you in early June.

Mission

The CSA was known formerly as the Board of Corrections. It has had long-standing responsibility for setting standards and conducting inspections at local jails and juvenile halls, regulating the selection and training of local correctional staff, and administering a variety of federal and state grants to local correctional facilities. As part of the governor's corrections' reorganization, on July 1, 2005, the board became the Corrections Standards Authority. Section 6030 of the Penal Code now gives the CSA added authority for setting minimum standards at state correctional facilities and sets a deadline of January 1, 2007, for this activity. CSA also assumed the additional mission of the Commission on Correctional Peace Officers' Standards and Training to improve the professionalism of correctional staff in state institutions.

1. *Please provide a brief statement of your goals. What do you hope to accomplish during your term on the Corrections Standards Authority?*

2. *Given that this has been a year of transition for the authority, what are the most important challenges facing the board? What are the most important issues that the CSA should be discussing and acting upon?*

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Local Facility Responsibility

5. *How often does a county jail or juvenile hall get inspected by your staff? Are you able to visit facilities and familiarize yourself with conditions? If so, what have you learned? If not, how do you familiarize yourself with the issues?*

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What role should the board play in ensuring better educational opportunities for the incarcerated? If you find that a county is not meeting its obligation to provide adequate room for education classes, what steps should the authority board take?

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Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814. You may fax them to 916 445-0596 or email them to nettie.sabelhaus@sen.ca.gov. Thank you very much for your help. I look forwarding to discussing these important issues with you.

Sincerely,

DON PERATA

DP:MG:dc

cc: Corrections Standards Authority



DELANCEY STREET
FOUNDATION
600 EMBARCADERO
SAN FRANCISCO, CA 94107

Dr. Mimi Halper Silbert
President & CEO

May 31, 2006

Nettie Sebelhaus
Rules Committee Appointments Director
Room 420
State Capitol
Sacramento, CA 95814

Enclosed please find my responses to the questions sent by Senator Perata regarding my appointment the Corrections Standards Authority. I was first appointed to the Board of Corrections by Governor Dukemeijan in his first term of office. I have served on the Board under Governors Davis and Schwarzenegger as well and have a long standing familiarity with the basic goals and operations of the Board of Corrections. During my last term, I had numerous meetings with the Secretary of Corrections, Under Secretary of Corrections and Heads of the Youth Authority and Department of Corrections during the period of reorganization. I have a Doctorate in criminology from Berkeley and have worked in the field for almost 40 years. I believe I understand the added authority to CSA particularly regarding its working more closely with the state institutions. Many years ago I served on the Advisory Board to POST, was involved in developing the probation training program for the Board of Corrections, and could, perhaps, be helpful working with the Commission on Correctional Peace Officers Standards and Training.

However, I believe we all need to acknowledge that this is a very difficult time of transition. The vast majority of people, both those appointed to the Board and those on staff are new to their positions. To date the Board of Corrections staff had served in their positions for a number of years. They had long standing knowledge of the counties, their strengths and their weaknesses. They had relationships that made it possible to take difficult stands with counties. The majority of people with that history of dealing with local corrections have moved on. Similarly, as you note, the Board has not met regularly. I think that it's critical for us to face the fact that our most important first step will be to establish stability. We will need a basic review not only of the additional mission given to the new CSA, but also of the traditional goals and processes of the old Board of Corrections.

The Board of Corrections traditionally met in local facilities. When we were building adult "new generation" jails, we alternated meetings in Sacramento with meetings at the new jails. Now that the legislature authorized and the Board was overseeing the building of new juvenile facilities, we were just beginning the process of meeting in those facilities as well. It is important to orient the Board not only through information but also through tours, having some of our meetings in state institutions as well. Particularly since we are going to be responsible for standards, we need to come to a unified understanding of

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the process the staff will use and the method by which they will bring any standards issues to CSA.

Our correctional system is in drastic need of change. We desperately need to get the full number of appointments made to CSA immediately and also need definitive staff appointments made so that we can begin to take action. When the appointments were originally made under Governor Schwarzenegger, it was my belief that we had an extraordinary window of opportunity in which we could develop model pilot programs for parole, for training staff to develop programs within the prison that would provide realistic opportunities for the inmates to begin to turn their lives around and could then be connected to community based programs; to redo the Youth Authority into small units with programming that could begin inside and continue in community based programs; and also to continue what the Board of Corrections and legislature had started by having the counties develop Local Action Plans where numbers of juveniles were moved out of juvenile institutions and into community based programs. With new legislative funding, counties were beginning the process of building new juvenile institutions as well as developing alternatives to incarceration because they understood that their juvenile facilities needed revamping at every level. Unfortunately, during this year of transition, these actions were not taken. While the entire system was reorganized on paper, little happened in action. I don't think there's anyone unaware that the system, quite frankly, is a labyrinthine mess.

I attempted numerous times, along with others, to offer ways to enact some of the changes that are critical to occur. I don't know what bogged down. I do know that we are slowly losing that extraordinary window of opportunity. This is one of the most frustrating periods in corrections that I have witnessed since I was hired in the mid-seventies by a committee in the legislature to study the prison system. Despite my frustration, I am still willing to serve as a member of the CSA and do my best to help stabilize our group, try to get some unity, push for all appointments in staff, to the CSA and to SAG to be made, and try to move corrections toward actions, if you still want me to do so. To be honest, the excitement and optimism I felt initially is on hold until our Board can meet again and we find a way to begin to move on some of these critical issues.

Thanks for your consideration.

Sincerely,

Mimi H. Silbert
President

MHS:dc

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LB Boydstun
Fishery Advisor

Senator Don Perata
MAY 25 2006

May 22, 2006

The Honorable Don Perata, Chairman
Senate Rules Committee
California Legislature
State Capitol, Room 420
Sacramento CA 95814-4900

Dear Mr. Perata:

Thank you for the opportunity to appear before your committee regarding my confirmation as a member of the Pacific State Marine Fisheries Commission (PSMFC). My brief responses to your questions follow.

Short-term goal: my short-term goal is to attend all instate and annual meetings of the PSMFC and to represent the interests of California citizens in those meetings while at the same time giving careful consideration to the effect of our actions on the sustainability of California marine fishery resources. The opportunity for representation occurs in instate meetings when the agenda for the annual meeting is formulated and in the annual meetings at the close of fishery informational presentations and in the business meeting when position papers are developed and adopted, generally for use by federal representatives.

Long-term goal: I aim to continue to be actively involved in the scientific study and management of West Coast marine fishery resources so that I can capably represent California marine fishing interests in PSMFC meetings and other PSMFC activities. I am currently a marine fishery advisor and work very closely with the Department of Fish and Game, Fish and Game Commission, Pacific Fishery Management Council, and National Marine Fisheries Service, primarily on issues associated with salmon research, management and endangered species recovery. I plan to continue to work with these agencies on marine fishery issues for as long as I am able to do so.

I look forward to meeting with your Committee.

Yours truly,

LB Boydstun

LB Boydstun
Fishery Advisor

MAY 25

June 5, 2006

The Honorable Don Perata
Chair, Senate Rules Committee
State Capitol, Room 205
Sacramento, CA 95814

Dear Senator Perata:

I am honored to have the opportunity to serve on the Pacific States Marine Fisheries Commission (PSMFC). The PSMFC serves a critical role in providing Pacific Coast cross jurisdictional education, outreach, science integration and science data synthesis on themes common to member states.

In the near term my principal objective is to use PSMFC as a platform to build alliances with participating states to support additional congressional financial support for science syntheses, education and outreach products to be used by states related to fisheries independent and dependent data, invasive species, and legislative and budget priorities common to West Coast states.

In the longer term, my objective is to broaden PSMFC interest from Fisheries dependent data to broader policy development related to marine protected areas along the West Coast, coordination in non fishery dependent data such as contemplated by California Ocean Protection Council and common strategies to harmonize fisheries management regulatory process with marine protection, and management.

In closing, my role as Director of Department of Fish and Game and associated participation on CALFED, Wildlife Conservation Board, Marine Life Protection Act, Blue Ribbon Task Force, and responsibility for 1,100 miles of California's beautiful coastline provides a background to effectively represent the state of California on the PSMFC.

Sincerely,

L. Ryan Broddrick
Director

JUN

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Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to DEBRA BOWEN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

JOHN D. DOVEY, Division Chief
Adult Institutions
Department of Corrections and Rehabilitation

DAVID WARREN, Volunteer Chaplain
Taxpayers for Improving Public Safety (TIPS)

DARLENE ESTES-DANGERFIELD, Legislative Liaison
Association of Black Correctional Workers

ASKIA MUHAMMAD ABDULMAJEED
Associated Chaplains in State Service

MATT GRAY
Capital Alliance

RICHARD TATUM, State President
California Correctional Supervisors Organization

BERTHA SANCHEZ, Employee
Kern Valley State Prison
Private Citizen

BERNARD E. WARNER, Chief Deputy Secretary
Division of Juvenile Justice
Department of Corrections and Rehabilitation

SUZIE COHEN
Consultant, Suzie Cohen & Associates

J. IMANI, Campaign Director
Books not Bars

HILDA RODRIQUEZ
Books not Bars

CHRISTINA PRESSLEY
Ward Family Council, Chino

JOSHUA GOLKA
SEIU Local 1000

JIM BOYLE, Academic Teacher
SEIU/DJJ

DOUGLAS WOODS, Academic Teacher
SEIU/DJJ

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: When last we were here, we had Mr. Dovey here. And rather than putting you through anything further, I'm glad you came back. Moderately surprised, but happy nonetheless.

What I'd like to do today is just ask those people who are in support of his confirmation to come forward. Please keep your testimony riveting.

MR. WARNER: I promise that it'll be far shorter than the sermons I give at the prisons.

My name is David Warner. I'm a volunteer chaplain at three of the state prisons. I am, until at least next week, I'm the only Jewish chaplain available at the California Institution for Women.

The photographs you're seeing handed to you are my congregation.

I've known Mr. Dovey since before he was the warden at CIW. I've worked with him for that length of time. I want to tell you that he's a man of incredible personal high standards, and he's supported every activity.

As a member of the statewide Family Council from which I've now retired, I met with him constantly. We spoke about many issues. Most of the time he disagreed strongly with me, but he listened and in most instances modified many of the programs in order to meet the needs of family members of the inmates.

I'd like to give you one very important example.

When the Department of Corrections decided to go on vendor-only packages, an issue arose over families who had acquired personal property to send to the inmates, and they didn't have enough opportunity to finally get these things in before the cutoff date. Against all policy at the Department of Corrections, Mr. Dovey allowed all of us who had -- all the family members at CIW to have a one-month window to empty all those things that we had acquired during the prior 12 weeks to get them to the inmates so that families weren't stuck with them.

You'll notice there's a dog sitting on the ground in front of the women. Mr. Dovey instituted the dog training program at CIW, and it's one of the most popular activities of the women there.

I see the women there all the time, and I see the overcrowding in the prisons at Folsom, at Mule Creek, at High Desert, at California Correctional Center. Mr. Dovey's done his best to address those issues.

I'm sorry that Senator Bowen isn't here so I could address some of the female issues, but one of the things that I've observed and I know of personally is the Right Prison, Right Mission Program. That has been designed to help inmates so that they can be near medical facilities for their needs, and near their families, so that when they parole out, they'll have an infrastructure so that families can be there for them.

I can't tell you how strongly I endorse Mr. Dovey. I've had other members of the rabbinical movement write letters, some of which you may have received, some of which you may have not. But it would be a terrible loss to the

State of California and the Department of Corrections if he is not confirmed.

Thank you very much.

CHAIRMAN PERATA: Thank you, Rabbi.

MS. ESTES-DANGERFIELD: Hi. My name is Darlene Estes-Dangerfield. I am the Legislative Liaison for the Association of Black Correctional Workers.

I am here in support of Mr. Dovey today.

I would just like to say that I have personal knowledge of Mr. Dovey, and I can personally say that he is a man of his word. He's worked closely with the association and other associations and groups, and gives full support. So today I wanted to take a time-out to come out and just make sure that I was here to support him today.

And I would also ask that you guys would just take a look at his individual potential, what he's done for the California Department of Corrections as a whole, and not with his -- group him with prior administrations.

Thank you.

CHAIRMAN PERATA: Thank you.

MR. ABDULMAJEED: Good afternoon. My name is Askia Muhammad Abdulmajeed.

To Mr. Chair and the Committee, I stand here or sit here today in two capacities. One as the Executive Board Member of the California Association of Statewide Chaplains in State Service. We represent a nondenominational group of Catholics, Muslims, Jews, Native Americans across the spiritual divide.

And we have had occasion to interface with Mr. Dovey on five or six occasions at the department to assure us of his support for religious programing.

And we prayerfully urge your confirmation of him here today.

You probably won't notice it, but I'll call it to your attention. The previous person to sit here was my Jewish brother, and am the President of the Muslim American Chaplains Association of California, which means that the spiritual consensus is unanimous for Mr. Dovey, and we hope it's the consensus on this committee.

Thank you.

CHAIRMAN PERATA: Thank you.

SENATOR ASHBURN: I don't think we should joke about the need for divine intervention.

[Laughter.]

MR. GRAY: Thank you, Mr. Chair and Members. Matt Gray here on behalf of Taxpayers for Improving Public Safety.

Without repeating anything that was said prior to my testimony, I'll just say I've had the pleasure of dealing with Mr. Dovey on a number of occasions. And while we don't always see eye-to-eye, I do always find him to be a man of integrity, and I expect that that will be an issue that is reoccurring throughout the testimony that you'll hear thereafter.

Thank you.

CHAIRMAN PERATA: Thank you.

MR. TATUM: Good morning. My name is Richard Tatum. I'm the State President of the California Correctional Supervisors, which represent supervisors and managers with the California Department of Corrections and Rehabilitation.

We're here to say that we feel Mr. Dovey is moving forward with the rehabilitation part, a part of what came into Corrections in the last few years.

We think that he's the type of person that this department needs. His integrity, his honesty, his ethics are things that in the last few years that there's been some doubt brought upon this department. And you know what? I think he is the type of person that you need there.

And we'd like to say that we, our organization, fully supports him.

Thank you.

CHAIRMAN PERATA: Thank you.

Anything further in support? In opposition?

Seeing none, would you mind, Mr. Dovey, coming up for a second? Senator Battin had a question to ask of you.

SENATOR BATTIN: Thank you, Mr. Chairman.

Since last week, there's two new things. One, I had a chance to sit down with Mr. Dovey.

And secondly, the Court Special Master came out with their report dealing with the Department of Corrections, and made some incredibly strong statements, which was in every newspaper across the state.

I kind of want your take on some of this.

First, have you read the Special Master's

Report?

MR. DOVEY: I've read most of it; yes, sir.

SENATOR BATTIN: Do you agree or do you disagree with the findings and recommendations that the Special Master had in regards to the California Correctional Peace Officers Association running your department?

MR. DOVEY: In my operation, number one, I think I'm in a poor position to comment on Mr. Hagar's findings.

But I can tell you that in my operation, that when we need something done, we go up the chain to the Secretary.

And I can tell you, as we chatted yesterday, that I think in the past year or so, the communication has not been as -- as good as it should. And I look forward to improving communication with the bargaining unit.

But I can only comment about what I'm responsible for.

SENATOR BATTIN: When you call the Secretary, does Mr. Tilton answer the phone, or does Mr. Jimenez answer the phone?

MR. DOVEY: When I call the Secretary's office, it's going to be Jim Tilton.

SENATOR BATTIN: Part of the report was that there was a pervasive code of silence within CDCR.

As a matter of fact, I was just taken by this. This is circular logic here. It says.

> "In addition, the report found a pervasive code of silence in the

CDCR, a problem so ingrained in California prisons that there was a code of silence about the code of silence itself."

So therefore, if no one said anything, there must be something going on. That's a rather circular logic to me.

Do you find that to be the case?

MR. DOVEY: I think for the majority of our employees, they want to come in everyday, do a good job, and go home on time.

Have we had instances where individuals in our department have not acted appropriately, have been dishonest, or not reported things they've seen? Absolutely.

But as I've gone around to the prisons, and I've toured the institutions and talked to staff, my take is the majority of the people that work for us are hard working people that come in. They want to perform. They want to do well. They want to be safe. They want to report incidents when they see them.

And again, I'm not saying that we haven't had problems with individuals in the past, but --

SENATOR BATTIN: Do you believe there is a pervasive code of silence?

MR. DOVEY: I think there is still a reluctance on the part of some -- some individuals because every once in awhile we'll find it. But when we do, we have a process to address it.

SENATOR BATTIN: Part of the report says there's

an active campaign to, quote:

> "... terrorize CDCR employees so that they will not report, or attempt to correct, inappropriate behavior by CCPOA leaders."

Do you find that to be the case?

MR. DOVEY: If I had information that anybody was trying to terrorize, intimidate, or prevent someone from speaking the truth, then I would have to deal with that.

SENATOR BATTIN: Do you think that's a pretty strong statement?

MR. DOVEY: I think it's a very strong statement.

SENATOR BATTIN: Do you agree or disagree with it?

MR. DOVEY: Again, I don't have information that Special Master Hagar may have.

But I can tell you, if I had information that reflected that, I would not let that go. I would -- I would take action.

SENATOR BATTIN: It goes on and says there is:

> "... concerted efforts by CCPOA to embarrass and humiliate CDRC employees solely to have the courage to report misconduct."

Do you see that case? Is that your experience?

MR. DOVEY: Again, if I had specific information where I thought that occurred, I would elevate that up.

SENATOR BATTIN: One of the other complaints, and

there's many, another complaint was that there were many critical decisions that the Secretary, the CDCR Secretary has made that CCPOA has been allowed to overrule.

Do you know of any examples of those?

MR. DOVEY: I don't have specific knowledge of what you're commenting about.

SENATOR BATTIN: Well, they're an equal opportunity offender here that says:

> "A series of disturbing developments have taken place which signal a return to the prior Davis administration's practice of allowing the CCPOA to overrule the most critical decisions of the CDCR Secretary."

Do you have any idea what he's referring to?

MR. DOVEY: I have not been involved in any discussions, any decisions, where anybody other than my boss has made a decision in what direction we're going.

SENATOR BATTIN: I'm sorry?

MR. DOVEY: I have not been involved, nor do I have knowledge, of any decisions that have been overturned or have been made by anybody other than my supervisor.

SENATOR BATTIN: Right.

Do you believe that the CCPOA has a cozy relationship with the administration?

MR. DOVEY: I have no first-hand knowledge. All I can -- all I -- the only knowledge I get on whether there's a

relationship with the Governor's Office is what I read in the paper. Other than that, I wouldn't know.

SENATOR BATTIN: Part of the intimidation campaign to terrorize CDCR employees was the "rat trap" case.

Are you familiar with is that?

MR. DOVEY: I'm familiar with it.

SENATOR BATTIN: What happened to the officer?

MR. DOVEY: The officer ultimately was disciplined.

SENATOR BATTIN: A 60-day suspension?

MR. DOVEY: I'm not for certain, but I think that was correct.

SENATOR BATTIN: It's my understanding -- if I can find it. No, I don't think I have it.

The issue that was recited -- and I have a picture of it, but unfortunately it's in my office -- is the flier that a correctional officer put up that was a picture of a rat trap, and then some language. It said basically, "We'll get the rats; ferret out the rats."

It was up for one day. When that came to light, it was taken down and that officer was suspended for 60 days.

Is that a fair assessment?

MR. DOVEY: The long and short of it; yes, sir.

SENATOR BATTIN: Which I believe is correct.

What concerns me as well is also, and please correct me if I'm wrong, that the warden of that same institution had on the back of his door a picture; it was a bulls eye. And it had a taped mouse or rat on it, that.

Was this warden suspended, or was he reassigned?

MR. DOVEY: I don't -- I don't recall that incident at the prison that you're talking about. There was an incident at another institution. And I'm not sure if it was the same one, based on what you said, but that warden was removed.

SENATOR BATTIN: Maybe it was a different institution, but I'm not sure about that.

Both of the situations were inappropriate. Would you agree to that?

MR. DOVEY: Absolutely.

SENATOR BATTIN: Both of them deserved to be punished. And both of them were punished.

MR. DOVEY: Correct.

SENATOR BATTIN: Was anyone terrorized?

MR. DOVEY: I don't believe so.

SENATOR BATTIN: I have literally three pages of questions, and I've been skipping around on them.

I appreciate you answering the questions. And I will ask a lot of the same questions to our other nominee as well.

I just want to ask you one final question on that. The report that the Special Master put out was stunning in its very direct accusations and use of language, very strongly worded language that damned many people.

I do not agree that the President of the California Correctional Peace Officers Association is running the Department of Corrections and Rehabilitation, especially because all I ever hear from them is how frustrated they are

with the Department of Corrections and Rehabilitation. I figure if he was running the show, he wouldn't be frustrated as much with himself.

What is your position on Special Master's Report?

MR. DOVEY: My position is that I believe the Special Master's calling for a hearing. And he's very concerned that we don't backtrack on the progress we've made with our employee matrix, our disciplinary process, and the accomplishments that we've made in that -- in that regard.

And I'm -- I haven't talked to the Special Master about his report, so I hate to make any assumptions about where he's coming from, but I think we have and continue to make accomplishments on the code of silence, on our employee disciplinary matrix, on a better system of employee discipline. And I think we can stand on those accomplishments.

SENATOR BATTIN: The Special Master says:

> "The top ranking leadership of CDCR is confused, understaffed, dispirited, and most important, uncertain who is really in charge: the Acting Secretary or the President of the CCPOA."

Do you know who's in charge?

MR. DOVEY: I'm clear as a bell who's in charge.

SENATOR BATTIN: Thank you very much.

CHAIRMAN PERATA: I think when I was asking if there was any opposition, no one heard me. So, if there is

opposition, please come forward.

MS. SANCHEZ: Hello. My name is Bertha Sanchez. I work at Kern Valley State Prison. I live in Bakersfield, and prior to working at Kern Valley, I worked at Wasco State Prison. I've been in the system 14 years.

I had to come here last week to meet Mr. Dovey after trying to contact him for 14 months.

There -- the code of silence exists as of yesterday. It does exist in the institutions. And there are things that are happening there, and we try to get this information out, and we're stonewalled.

And so, we have to take our time off work and not get paid, use our gas, come here to do this.

CHAIRMAN PERATA: I understand you've met with staff, and we're going to look into the specifics.

MS. SANCHEZ: Right. And I am going to give you specifics because they took --

CHAIRMAN PERATA: No. What I'd like to do is hear the reason for opposing him.

MS. SANCHEZ: Right.

The reason for opposing him is because I don't believe Mr. Dovey knows what's going on the in the prisons. He's -- it's -- there's too much going on, and he doesn't have control of it.

Somebody has to make somebody accountable, because what's going to end up happening is, somebody is going to get hurt in one of these prisons, and I don't want that to happen to my brothers or sisters, union members, nonunion

members. I don't want that to happen, but that's what is going to happen.

And the prison that I'm at has only been open 14-15 months, and things are bad there. Bad, bad, bad. And nobody listens.

I gave something to the warden on June the 7th, and I've yet to hear back from him.

Now, Mr. Dovey did have someone call me last Friday, okay? They called me. They wanted to know what the concerns were. But she's like, "Well, I don't know what I can do." That's the problem. Nobody knows what they can do.

I mean, we have answers, but the thing is, that matrix that he's talking about, that matrix is used against us but not the supervisors, not the administrators. We're the ones that are paying on that matrix. We pay our 5 percent, or we get weeks deducted off of our pay, but not -- not the people that should be doing it. They get away with this stuff.

And that's the thing I want to ask Mr. Dovey, is that if -- you know, I know me being here, he's going to get confirmed or not.

But somebody here has to make him accountable, that we just don't have to come here each time to let our stories out. That he build a committee, and he did do that. On Tuesday when I went to work, he had the warden say that we were going to go ahead and start meeting with labor management.

That's a start. But you know what? It's a long time in coming. It's a start.

And the thing about it is, some of the problems

are with the wardens, right at the top. And that's trickling down. And that's what needs to be fixed.

And I thank you.

CHAIRMAN PERATA: You're welcome.

I just might add that we have been, ever since the reorganization took place, we have now been playing a little different role. We are now confirming the top management positions, which means that the accountability will rest with them.

We're not doing confirmations of individual wardens any longer.

MS. SANCHEZ: Right.

CHAIRMAN PERATA: Your point's well taken. I mean, the buck's going to stop with the man or woman that wants the job, for whatever reasons they want the jobs.

But the Governor now has called a Special Session, and that will punctuate some of the work that we're doing.

There will be hearings in the Senate on whatever the Governor's proposals are.

I don't expect you to take time off work and travel.

MS. SANCHEZ: It's that important to me that I will.

CHAIRMAN PERATA: I appreciate that very much, but there will at least be a forum there in the month of August.

MS. SANCHEZ: Okay.

CHAIRMAN PERATA: It will be interesting to see,

compare notes, with what the Governor's Office feels is important and what you feel is important as an employee of the system.

MS. SANCHEZ: Can I say one more thing?

CHAIRMAN PERATA: Sure.

MS. SANCHEZ: The thing is, when people come out to visit, first of all, we're warned and we receive a memo, or we get it somehow, that you don't come up to them people; you don't talk to them. Okay? And if they ask you anything, you say yes or no. And if you do come up to them, you do say anything, you're going to be in trouble.

SENATOR BATTIN: Really?

MS. SANCHEZ: Yes, truly.

So I ask that if any of you go, or Mr. Dovey goes, for him to walk with one person, and it not be administrative staff, because you know what? That's what we are told, not to talk to anyone.

CHAIRMAN PERATA: Who told you that?

MS. SANCHEZ: It comes down from the warden, the chief deputy. It comes from everywhere. It comes our health care administrators --

CHAIRMAN PERATA: Does your supervisor, immediate supervisor, tell you that?

MS. SANCHEZ: Yes. There is. And that's the stuff that I will be providing to Nettie, in their writing. Yes, there is.

CHAIRMAN PERATA: Thank you.

MS. SANCHEZ: All right? Thank you.

CHAIRMAN PERATA: Anyone else?

Any questions?

SENATOR ASHBURN: Just a couple questions, Mr. President, thank you.

I want to pick up on what Senator Battin was asking. He laid a foundation for the point that I'm trying to get to in terms of your view of your role within the organization as it existed prior, and as it exists today, in relation now to a Special Master's evaluation that's been produced publicly.

You were high in the organizational structure before. How do you view your role and responsibility in relation to the criticisms that are laid out in the report, about which Senator Battin asked specific questions?

MR. DOVEY: I view my responsibility as one that I'm accountable for what happens in the prisons.

And so, the discussion about the wardens no longer being confirmable, that works in reverse now, because now that they're no longer to be confirmed, people like me who come before you, it's kind of a reverse accountability. I rise and fall with the accomplishments and failures of the staff.

SENATOR ASHBURN: Did you feel that you had control over the wardens under the former structure?

MR. DOVEY: I feel we had control over the wardens, but we did not have the focus. We did not have the organizational structure that we have now.

Before, it was one person supervising parole, health care, and the institutions. And now we have much more

focus.

From a guy who did it both ways, I can tell you unequivocably, from where I sit, it's much cleaner; it's much better. We have a stronger communication model with the field.

SENATOR ASHBURN: Let me ask it more directly.

How much of what is in the report that Senator Battin cited do you feel is your fault?

MR. DOVEY: I haven't looked at it that it's my fault at all.

SENATOR ASHBURN: Say that again. No responsibility?

MR. DOVEY: The assertions that -- the perceptions that are made by Special Master Hagar, if you're saying what he's laid out in the report is somehow my fault, I would say I've worked hard to build a better prison system.

SENATOR ASHBURN: Let's be specific.

Senator Battin cited for you this rat incident, and showed us a picture of a bull's eye with a rat, and cited based upon the Special Master's review, I believe there's reference to that specific case.

MR. DOVEY: The rat trap?

SENATOR BATTIN: The rat trap. This was what was hanging on the back of a warden's door.

There's a picture that I have, but not with me, of what a correctional officer put up on their bulletin board that was a picture of a rat. They're different things. And they both were punished.

SENATOR ASHBURN: I think you just told me that

you did not feel any responsibility.

MR. DOVEY: No. I'm responsible for what happens in the prisons.

SENATOR ASHBURN: I asked you to repeat it, and you didn't. So, say it again.

MR. DOVEY: Senator, I'm sorry. I misunderstood.

SENATOR ASHBURN: What are you saying?

MR. DOVEY: I'm saying when there is incidents in the institution, that my job is to take immediate and appropriate corrective action. In both cases that's what happened, whether it was the high ranking warden who's no longer there, or the correctional officer, in each case.

SENATOR ASHBURN: Was the repercussion to the officer and to the warden equal?

MR. DOVEY: Well, the warden is now not a warden.

SENATOR ASHBURN: Tell me. Were you personally responsible for meting out the punishment to the correctional officer and to the warden?

MR. DOVEY: In our new system that's not quite the way it works.

SENATOR ASHBURN: But at the time in this case?

MR. DOVEY: Yes, I'm responsible.

SENATOR ASHBURN: Okay.

I don't want to go down that road any further.

MR. DOVEY: In both cases we took immediate action.

SENATOR ASHBURN: So in that respect, and I'm

going to say it again, what level of responsibility do you personally feel for the criticisms, observations, or however you interpret them in the Master's Report? Your responsibility in relation to the observations and conclusions that are in that report.

MR. DOVEY: My responsibilities are for the operations of the institutions, and I feel that I'm responsible for those operations. So, if there are successes that happen, I'm responsible. If there are failures, I'm responsible.

SENATOR ASHBURN: I would point out to you that that sounds like a different answer than you gave me a minute ago, because a minute ago I thought I heard you say you felt no responsibility for what was observed in the report.

MR. DOVEY: And if you were to believe the assertions that are made in the report, which there are going to be hearings, I cannot be accountable for the words Special Master Hagar wrote in his report. I can be accountable for what happens in the prisons.

CHAIRMAN PERATA: I might just refer to your earlier comment, that you had not read the entire report.

MR. DOVEY: Well, I've read most of it. I have to be honest. I think I've read most of it.

SENATOR ASHBURN: That's a performance evaluation of you. Senator Battin's read the report. This is your personal performance evaluation.

You didn't read the whole thing?

MR. DOVEY: Senator --

SENATOR ASHBURN: How long has the report been

out?

SENATOR BATTIN: About a week.

MR. DOVEY: It's been out one week.

I believe in terms of the disciplinary matrix, the performance matrix in that report that I'm accountable for, I think I can withstand the test.

SENATOR ASHBURN: The findings in that report, do you agree with them or disagree with them?

MR. DOVEY: Some of the findings in that report are based on information I don't have personal knowledge of.

SENATOR ASHBURN: In answer a few seconds ago, you said that the institutions were your responsibility. Everything in the report, as I understand, is about the institutions. How could you not know?

MR. DOVEY: From my recollection, some of the report has to do with whether or not there's undue influence by the bargaining unit in the administration.

SENATOR ASHBURN: And you don't have an opinion about that?

MR. DOVEY: I'm not privy to discussions usually in the Governor's Office. I've never been to a meeting in the Governor's Office where members of the bargaining unit were present.

SENATOR ASHBURN: That's one level, is an assertion of the leadership of the bargaining unit having influence with the Governor or his staff.

There's another level at the Agency Secretary's level.

But then there's you. And then there's the role of the bargaining unit's influence on the institution, on the daily administration.

What do you know about that?

MR. DOVEY: At the operational level, I don't know anything about undue influence in my office or in the prisons.

We follow the bargaining unit contracts. We try to work together with employee organizations. It's more of an operational day-to-day issue than it is anything else.

SENATOR ASHBURN: And the bargaining unit does or does not have something to say about the day-to-day operations of the facilities?

MR. DOVEY: Oh, absolutely.

SENATOR ASHBURN: So, you do know something about that.

MR. DOVEY: We follow the bargaining unit contracts. When there's issues that change the working conditions of the staff, then we're obligated to meet and confer, to notice them, to have those discussions, and to come to some kind of equitable agreement before we implement our processes.

SENATOR ASHBURN: Is their influence excessive on the level of interaction that you know about?

MR. DOVEY: Is their influence excessive?

SENATOR ASHBURN: Is it excessive? Is it just right? Or is it too minimal?

MR. DOVEY: Personally from a management's

prerogative, I would say in some cases, I think the requirements that we go through are not businesslike, but I certainly understand why they exist.

SENATOR ASHBURN: The more you talk, the more interesting it gets.

What are you talking about? What's not businesslike?

MR. DOVEY: Sometimes it's hard to make -- it's hard to make quick adjustments when you have to provide a 30-day notice, set up a meet and confer, and do those kinds of things.

Now, that's our requirements.

SENATOR ASHBURN: That sounds like criticism of someone's influence.

MR. DOVEY: That would be my only criticism.

SENATOR ASHBURN: So, some of the requirements that have been set out in agreements that require procedures for communication are hindering you in your ability to do your job?

MR. DOVEY: Bear in mind, these are procedures that management already agreed to in the previous contract.

SENATOR ASHBURN: One final, and that is, I asked about your personal responsibility, your view of it, in relation to the report, things that have happened, because obviously the report can only deal with that which has already passed.

What is your view of your responsibility going forward? Is it different?

MR. DOVEY: In terms of the assertions made by the Special Master, I believe that we have to be honest in our dealings with everybody.

SENATOR ASHBURN: You had to function in a different structure before. Most of the comments in the report are based on the way things were done.

You're in a new organizational structure now. You have less responsibility in one sense, and more in another.

What's your expectation in terms of your personal responsibility to make sure that the things, whether they're true or untrue, valid or not valid, that are observed, your ability to get things done and to do it right?

MR. DOVEY: My expectation is that we follow all the laws, including the bargaining unit contracts, that we adhere to our -- the progress that we've made in the disciplinary matrix, that we continue to -- to make strides in elevating the professionalism of the staff that work in the prisons.

SENATOR ASHBURN: None of that spoke to the issue of your personal responsibility.

MR. DOVEY: My responsibility is to monitor the processes, that when there are incidents, to take immediate action.

SENATOR ASHBURN: That sounds very reactive to me. If something happens, you're going to do something about it.

MR. DOVEY: That's part of my responsibility.

SENATOR ASHBURN: It seems like what the Master is saying, and many of us have observed, is that there are things that ought to be set into motion to do things different before they happen.

MR. DOVEY: Well, it's always better to have a preventative strategy, but sometimes incidents occur. When they do, we have to review them.

SENATOR ASHBURN: I'd hope that that would become de minimus, and that most of your role is about making it happen the way it ought to happen. That's called having a vision, and then implementing a vision.

MR. DOVEY: That's correct.

SENATOR ASHBURN: I don't hear any vision from you. So, what is your personal responsibility to make it different?

MR. DOVEY: My personal responsibility is to, one, set the example, to lead by example, to be honest and forthright.

Two, I expect more of my staff than ever before, but no one expects more out of anybody more than I expect out of myself.

I have an obligation to make sure that we are following the law, that we implement our policies and procedures, and that when things go wrong, that we take action.

SENATOR ASHBURN: That's it.

CHAIRMAN PERATA: Anything further from Committee Members?

I'll accept a motion.

SENATOR ASHBURN: I'll make a motion.

CHAIRMAN PERATA: We have a motion to approve. Please call the roll.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Bowen.

SENATOR BOWEN: Aye.

SECRETARY WEBB: Bowen Aye. Cedillo. Battin. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Three to zero.

CHAIRMAN PERATA: We recommend confirmation, congratulations and good luck.

MR. DOVEY: Thank you.

CHAIRMAN PERATA: Thank you.

Our next guest is Bernard Warner, Chief Deputy Secretary for Juvenile Justice, Department of Corrections and Rehabilitation.

Welcome.

MR. WARNER: Thank you, Chairman Perata.

Members of the Committee, my name is Bernie Warner. I'm here before you today seeking your confirmation for the position of Chief Deputy Secretary for Juvenile Justice.

I began this position eleven months ago with a strong commitment to reform the state's broken juvenile justice system. With over 26 years of experience in criminal justice outside of California, I've had a chance to observe from a distance the problems plaguing the state facilities operated by DJJ.

I came to this state to lead the reform that so many desperately seek. I've already done this in three other states, and while California is certainly the most complex and

challenging, I remain confident that it can be done.

I am proud of what we accomplished over the past eleven months. Through the detailed preparation of remedial plans, we have set the stage in almost every area for significant improvements. These include medical, mental health, safety welfare, sex behavior treatment, education and disabilities.

But as the national experts who reviewed our plans said in their latest report to the department, this system can be fixed, but it will take great effort, money, and lots of time. I certainly have the energy, and as of last night, the Legislature has provided the funding, and now all I need is some time.

Our goals for the juvenile justice system are very basic: We have a system that is safe for our staff and for the youth in our care, that we provide services that will reduce the risk of reoffending, thereby enhancing public safety, that we emphasize reentry from the moment a youth is committed to DJJ, we ensure the victims have a voice, we work to strengthen the entire juvenile justice continuum, and we develop measurable outcomes.

While these goals are basic, implementing this change in a system is not easy. Whether it's the hiring of hundreds of staff, training around new programs and techniques, or making physical renovations to add treatment and education space in our outdated facilities, it will not happen overnight.

I'm well aware that we don't have the luxury of time. There are unacceptable incidents far too often in our

facilities. The tragic assault on a teacher at Chad last week is an example of why we need to prioritize making our facilities safe.

The greatest challenge I face is to balance the short-term need for improvements with the longer term need for comprehensive reform. I'm aware of the importance of both of these priorities, and I commit to you the leadership necessary to ensure safe and effective programs in our juvenile justice system.

It is honor to serve as the Chief Deputy Secretary.

CHAIRMAN PERATA: Thank you.

You got here last August?

MR. WARNER: Yes, sir.

CHAIRMAN PERATA: With much acclaim and expectation, but you weren't here before the reorg, so we're not going to ask you a lot of questions about that.

However, the Farrell case?

MR. WARNER: Yes, sir.

CHAIRMAN PERATA: What is it, and what are you doing to correct it?

MR. WARNER: The Farrell case is one that really represents the Department of -- the Division of Juvenile Justice needs major reform in almost every area. We can compare it to the adult system, where you'll see individual cases, Plata around health care, Coleman around mental health.

The Farrell case looks at reforming the entire system in the five areas that I talked about, everywhere from

health care, safety welfare, services to our youth.

And the state agreed. We signed an agreement, said we would submit plans in court. We have spent the last eleven months developing detailed plans, and I think are on the path to correcting the system.

CHAIRMAN PERATA: What kind of standards of measurements do you use? How can you tell you're improving?

MR. WARNER: I think there's a couple different ways, Senator.

We have developed what we call a critical path. It is a very detailed program with milestones, with activities, that will measure over the next four years our change in the juvenile justice system. It is one that the Legislature, stakeholders, anyone can look at and see very detailed progress.

But that's a process change. I think in addition to that, what we're doing is, we have to track changes in behavior: Are we reducing violence; are there fewer assaults on staff; are there fewer assaults between youth.

And finally, we need to look at outcomes. Ultimately what we need to do is say, we're here to reduce recidivism, to provide more safety in the community, and should be the ultimate measure that we address.

CHAIRMAN PERATA: What's the effect of gang activity? And would you venture that wards who enter the system are encouraged to the gang relationship in order to feel safe or to be safe?

MR. WARNER: We currently operate a very gang entrenched system. And I can tell you simply that we've had a

classification system that says, depending on your age, whether you're male or female, or your gang affiliation determines where you -- what facility you're placed in.

Our plan is to really change that and look at what the individual treatments are of our population.

The challenge with gangs, that gang involvement, is that it's very entrenched. It's not, in some cases, just the individual. It's the community; it's family. And so, you have to have a really comprehensive approach to deal with it.

Our plan -- several years ago there was, again, a decision to segregate by gang. We have in the last several months moved very slowly toward integration.

We now have for the first time, in a facility in Stockton Complex, Northerners and Southerners in the same living unit. And to date, we have not had any assaults between those two.

CHAIRMAN PERATA: You mean L.A. versus San Francisco?

MR. WARNER: Southern California and Northern California.

CHAIRMAN PERATA: But no relation to the gangs by the same Spanish name?

MR. WARNER: Yes, it is. I'm sorry.

CHAIRMAN PERATA: You can be frank here.

MR. WARNER: Okay.

CHAIRMAN PERATA: Walt Allen, who was the previous Director, and I have had a long relationship. We spent lots of time talking about CYA.

And one of the things that I found absolutely stunning was that the 23-and-one, where you spend 23 hours in isolation, and you get one hour out for whatever you do in an hour. It was, I think, called the Special Management Plan at one point. Walt wanted to go about changing that policy.

Where are we now on that?

MR. WARNER: It is -- it is a key part of our plan in the future to -- to move what are currently Special Management Programs, as you've referred to, Senator. Those are programs where youth who are -- who present a risk to others, have demonstrated violent and disruptive behavior, that they need to be in a more intensive management program.

Our plan changes that concept from SMPs to Behavior Treatment Units.

One of the challenges I think you had questions about was 23-and-one. There is no more 23-and-one in the Division of Juvenile Justice. At a minimum, youth will have three hours of programming available to them, to include recreation and education. But the ultimate -- and that is not enough.

And so, our plan commits to, as we roll this out, to have eight hours of services, to include education, recreation, and treatment as part of the reform process.

And this is just not a concept. We have very detailed strategies over the next year where we will start phasing those units in.

I think it's important to say that as I met with staff around the state, they are very committed to their work,

but they need the tools to do the job. And currently in Special Management Programs, where in some cases you have 40 to 45 wards, you have 3 or 4 staff who are spending all of their time trying to keep the peace, frankly.

And our strategy is to increase the number of staff, to decrease the size of those units to 24 -- instead of now, at Stark in Southern California, you have 47 sometimes in a living unit -- and, I think, to really make a significant impact on their violent behavior.

CHAIRMAN PERATA: Just given your position, and given that you want to make some changes, how free would you expect to be after you're confirmed to be an advocate for positions that you believe are correct, but you may not be getting as much support as you would like?

You don't seem like a go-along, get-along guy. So, have you thought about that?

MR. WARNER: Well, I believe that my role as Chief Deputy Secretary in Juvenile Justice is to set the policy for juvenile justice in the state.

I think it's important to understand that we only have one-half of one percent of the highest risk, highest need youth in the state's system. But I think if you develop partnerships with law enforcement, with DAs, with judges, and key advocates, that we can be much more direct around setting juvenile justice policy as a continuum. And that's my responsibility.

CHAIRMAN PERATA: If somebody's an adult serving a life sentence, and you keep them in isolation for 23 hours, it

may not be a good practice, but they're not going to get out and walk around.

But somebody in YA is going to get out. And if they're treated like an animal for a period of time, they will react that way, and I'm sure there are all different degrees, but just in terms of prudence, if not decency.

So I think it's important that somehow, way, shape, or form, you are able to communicate to those that have the purse strings, or whatever it is, of all that's wrong with this system, this is of the greatest concern to me because, for all intents and purposes, these are kids. So, I think that we have a special obligation to them.

Those of us who've lived in the state for awhile know that we all like to lock people up; we just don't want to pay for it. And we believe in punishment, but not rehabilitation.

You know, I've always thought if you can't approach it from a position of just your own humanity, approach it just from dollars and cents: This is stupid.

So, I'm glad you're doing it. I would hope that you would stay in contact with us.

I would believe that this is the kind of job that, if you couldn't do it right, it shouldn't be worth having. So, stay in touch with us.

MR. WARNER: Thank you. You have my commitment to do that.

CHAIRMAN PERATA: Anything from the panel?

SENATOR CEDILLO: Tell me about the teachers who

work for you, and what type of training, and what type of safety provisions you have with respect to them?

MR. WARNER: I know, Senator, it's been highlighted by the assault last week.

And all of the support staff outside of our traditional peace officers, who go through a four-month academy, receive a 40-hour orientation, where they talk about how to work with the other staff within the facility so that if they do identify issues around safety or concerns, then they are trained and they're familiar enough with how to address those concerns.

We have had a significant increase. Part of our remedial plan in education has brought on a lot of new teachers. And I think that we need to reassess how -- how clearly we're providing an orientation and a sense that they are comfortable in providing the teaching within our classrooms.

SENATOR CEDILLO: You said you do orientation for the teachers. Are there any other structural things you do related to design in terms of --

MR. WARNER: Well, I think core to -- I mean, education really is the backbone of our system. We need to provide those tools, both vocationally and basic education to our population.

And so, the principal at every facility is part of the management team of the institution and works to identify policies and coordination of how they work together to provide those services.

In addition to that, because teachers need ongoing certification training, then that is something that's

part of their normal activity.

Finally, our staff are required to have 52 hours a year of training in various areas that teachers are provided.

CHAIRMAN PERATA: Did you want to ask all your questions?

SENATOR BATTIN: I don't want to ask them all, but I will ask some.

Mr. Warner, I think in CDCR, I think you probably have the hardest job because you're dealing with overseeing the juvenile justice system.

You know, early on in my career, I made it a point to meet with victims of crime in my area to find out about them, and what happened, and how they are, and what I can do.

And one of the stories that just will stick with me forever is the murder of a little girl. She was fourteen. And she was sexually assaulted and murdered by her thirteen-year-old neighbor while her parents and the killer's parents were out at a pizza parlor, having a beer because they had just gone to a sports event together.

And they had grown up next door, and they didn't know where Andrea was. They finally found her. She was underneath their window when they found her.

I say that because the killer then left, got in a cab, actually called a cab because he wasn't old enough to drive. Apparently that was a law that he decided that he would obey that day. He went to his uncle's house, and he told the cab driver that he had done it, "I'm really in trouble now." And he confessed to the cab driver, basically, what had

happened.

The cab driver called the police, and he was arrested.

He showed the most amount of remorse of the entire killing to that cab driver. He told the mother in court, as he was sentenced, he told the mother that she was next. That was his last line to her, "You're next."

She knew that he was getting out of prison at 25 years old, and just scared her to death.

So, I understand, as Senator Perata said, that these are children. And I have kids, and love them dearly, and love children.

Some of them are killers and rapists, and have no heart or soul. They're just really, for whatever reason -- you can't make the case that he grew up on the wrong side of town because he didn't. He grew up in the same side of town as the murder victim. So you have to deal with that, and it's very hard.

I think it's probably a little bit easier to do it on an adult level. We're a little more jaded, I think, with adults than we are with kids.

So, I understand, and I appreciate that you have to deal with that. It's very hard. Some are lost. Senator Perata is right. We know one thing, that most of them or all of them are going to get out. They're going to get out when they're young.

You know, when we talk about prisons, and one of the best indicators of recidivism is age.

MR. WARNER: Correct.

SENATOR BATTIN: So, if someone's in prison for 30 years, they get out after they're 40, the chance of that person committing another crime is a lot less than when you get out when you're 25, and you've been hardened inside. So, we have to deal with that. That's your job.

Having said that, I just want to ask you a couple of questions along the lines with what the Special Master had found. I understand that you started in August, but let me just ask them.

Do you take your orders from the Correctional Peace Officers Association?

MR. WARNER: No, I don't.

SENATOR BATTIN: Do they tell you what to do? Do they influence your decision making?

MR. WARNER: They influence my decision making through a process in which I meet with the unions on a quarterly basis, and we discuss issues, and we identify things that we have in common that we need to resolve, and, I think, come up with mutual solutions.

SENATOR BATTIN: An employee-management kind of relationship?

MR. WARNER: Correct.

SENATOR BATTIN: Do you believe that in your part of the CDCR that there's a pervasive code of silence?

MR. WARNER: I'm not aware of that.

SENATOR BATTIN: So, using the Special Master's logic, if you haven't heard anything about it, it must be true

because there's a code of silence about the code of silence.

Do you have a problem with the meet and confer process?

MR. WARNER: No, sir.

SENATOR BATTIN: It seems to work okay?

MR. WARNER: Yes.

SENATOR BATTIN: Do you still maintain your management-employee relationship through that?

MR. WARNER: Yes.

SENATOR BATTIN: Even though that's part of the bargaining unit's contract?

MR. WARNER: Yes.

SENATOR BATTIN: In your opinion, are the legitimate union concerns being properly addressed through CDCR's formal grievance process?

MR. WARNER: I believe -- yes, sir.

SENATOR BATTIN: I'm trying to cut this.

CHAIRMAN PERATA: He's also not giving you much much a target. He keeps saying yes.

SENATOR BATTIN: That's okay. Sometimes short, direct, and precise answers are what we're looking for.

A lot of this from the Special Master was before your time; right?

MR. WARNER: Yes, it really is. The Chairman discussed that most of the litigation activity in the juvenile system is specifically around the Farrell case.

I would say, Senator, that we are -- there is agreement that the goals that we have to make our facilities

safe and to provide services is agreed upon by the department and agreed upon by the labor groups that we work with. And we have a responsibility. One plan alone has 435 policy implications.

We will sit down and discuss those and resolve those issues.

SENATOR BATTIN: Are there any personnel decisions that you've asked CCPOA's permission for?

MR. WARNER: No, Senator.

SENATOR BATTIN: Finally, again, these are the words of the Special Master, are you confused, dispirited or uncertain who is in charge?

MR. WARNER: No, I know who's in charge.

SENATOR BATTIN: Thank you.

CHAIRMAN PERATA: Would anyone like to come up and speak in support of the nominee? Please do so.

SENATOR BOWEN: If I might, I actually think that we've had a good discussion, but I just want to make note that you've got a difficult job ahead.

When I was in law school, Professor Richard Bonney used to teach a whole semester class called Dangerousness. And it was a class about law enforcement attempting to assess the risk of dangerous behavior. And it turns out to be an exceedingly difficult thing to do, to predict who is dangerous and who is not. But it's also extremely important.

So, I think you have a big job ahead. It's a critical job.

Please let us know if there are things that you need to make things better. And in particular, I'd like to later have a conversation with you about your information technology system, and whether or not you are keeping track of people on four-by-six index cards, which is something that's going on throughout the Corrections system.

And there is no way that we are going to get a handle on what's going on in Corrections unless we provide tracking systems that give CCPOA members and management the ability to deal with some of these things in a way that's of the 21st Century and not of the, literally, like the '50s, box of index cards.

MR. WARNER: I look forward to that conversation.

SENATOR BOWEN: Good.

Mr. Pro Tem, this is a bug in your ear for next year's budget. I won't be here, but it's something we should have done this year and we really need to do. We need to invest in a computer system for the Department of Corrections.

CHAIRMAN PERATA: Or bigger cards.

[Laughter.]

SENATOR BOWEN: We've got officers in other jurisdictions, DAs who want to try a case. They have a witness in the Corrections system. They don't know which facility they're in.

CHAIRMAN PERATA: I know.

Yes, ma'am. Nice to see you again.

MS. ESTES-DANGERFIELD: Yes, again.

My name is Darlene Estes-Dangerfield, with the

Association of Black Correctional Workers, Legislative Liaison.

Again, I'm here in support of the confirmation of Mr. Bernard Warner.

CHAIRMAN PERATA: Thank you.

MR. ABDULMAJEED: Mr. Chairman and Members of the Committee, my name is Askia Muhammad Abdulmajeed, and I am again here in two capacities: President of the Muslim American Chaplains Association, as well as an Executive Board Member of the ACCISS, Association of California Chaplains in State Service, which is a denominational program supporting all of the chaplains.

The first thing I want to say is that I worked at the Youth Authority for a number of years, and I also worked in Corrections for a number of years.

And the most debilitating thing for me to do was to sit down after I have now encountered someone in the Department of Corrections who I also worked with as a youth in the Youth Authority, and that person graduated from one level of crime to another level of crime.

That rite of passage has to be ended. And we hope to have someone who is an advocate, who has the skills and the ability and the commitment to help our youth in California because the youth in California, particularly youth of color, they're struggling to survive.

Struggling to survive in a world that most of us couldn't imagine or would want for our own children, and that is a world where a bullet wound is more likely than a classroom. A world where full term jail sentence is more likely than a

full-time job. A world where death is not just an idle threat but a statistical certainty. And that's because of the risk factors that exist in communities such as negative peers, negative and violent peers, the easy accessibility of alcohol, drugs, and guns, and also academic failure.

And so at this time, the Department of Corrections is extremely important in terms of moving the pendulum towards rehabilitation. But with the youth it's even more important, because we don't want them to continue that process of graduating from the Youth Authority to the Department of Corrections.

And we hope and pray that Mr. Bernard Warner will receive your full support for his confirmation to help end the cycle.

Thank you so much.

CHAIRMAN PERATA: Thank you.

MR. TATUM: Committee, my name is Richard Tatum. I'm the State President of the California Correctional Supervisors Organization, which represents supervisors and managers in CDCR and Department of Juvenile Justice. It's kind of hard to say now because it was Youth Authority for so many years for me.

I'd like to say that Mr. Warner is stepping into a job that he's got an organization that's been broken for a long, long time. And I think it's still broken.

However, you know, I think he's going at it the right way. He's trying to correct the things that need to be corrected. He has the integrity. He has the knowledge that

needs to be brought forward.

Because of that, our organization fully supports Mr. Warner and request his confirmation. Thank you.

MS. COHEN: Mr. Chairman, Members, I'm Suzie Cohen, 26 years working in Corrections, state and local, in California, first as the Executive Director of the California Probation, Parole and Correctional Association, and for the last 10 years as a consultant, working for a great boss, myself.

I've been involved with some of the realignment and some of the reform efforts that Mr. Warner has initiated. And everything in my research, and my experience, and in my personal sense of this says, don't let him get away. He's doing the right thing for the right reason, although maybe a little too late. Now is when we need to start.

Mr. Warner has started. He's started with best practices. He's started with accountability. He's started with quality control.

He has in fact, Senator, the vision that we all want for California's youth corrections system at the state level. And he's been very receptive to working with the probation departments, the sheriffs departments, the law enforcement at the local level to really create what we've never had in this state, and most states don't, a true juvenile justice continuum from prevention through custody at the local level, custody at the state level, after care, and reentry to a community.

I urge you not only to confirm Mr. Warner, but to stay in his corner and help him get the resources, and the

support, and the personnel to do what desperately needs doing, that he's perfectly well aware of, and that I think he can do for us.

Thank you.

CHAIRMAN PERATA: Thank you.

Yes, sir.

MR. JAKATI IMANI: Good afternoon, Senators, Chair.

I'm sure -- I'm Jakati Imani, Campaign Director for Books not Bars.

And I'm sure Mr. Warner never thought that I'd be sitting at this table next to him, supporting him.

And I think, you know, Mr. Warner and I have had our disagreements, and at the end of the day, I think he's perfectly well qualified and suited to be the head of this here department and division.

To me that's not so much the question. I think some of the stuff that came out in the Special Master's Report points at some of the real issues here.

In California, we've used young people as a political football, young people. And we've used crime in particular as a political football.

The Senator told a heart-wrenching story. I'd like to ask Fondo Whitfield and Allen Fiester to stand up, please. These two folks here, their sons were found apparently hanged in their cell in a California Youth Authority prison. They were on suicide watch when this happened. They were 17 years old.

One of them was there for getting into a stolen car and lost their life. They'll never see their children again.

Another family that's not here today right now, their son, Joseph Maldonado also in California Youth Authority for being in a car that he didn't own. Certainly not something we would encourage or endorse, but also found hung in his cell after being put on lockdown for 23 hours a day.

Senator Perata asked Mr. Warner a great question: When are you going to stop that?

Mr. Warner's an incredibly compassionate, passionate, committed man. And he said, "It's in our plans to work on that."

That's a bizarre thing when you know that something, a practice, is killing young people, that it's in your plans to work on it.

My real concern is that we could have the Dalai Lama, we could have John Paul, the Pope, have the job that Bernie Warner has, and without real serious commitment from the Governor all the way down, it doesn't matter. Kids will continue to die.

The Senator also made a good point, these kids come home. Forty percent of the kids are in the Youth Authority are not there on violent crimes. They're there called 5s, 6s, and 7s. Mr. Warner can tell you about what those things mean, but a lot of them are there for parole violations. They did something once before, and they had a technical parole violation. And a third of them are there now, waiting on

technical parole violations. But they're still not coming home and being able to stay home.

There has to be a policy shift in this state, and we're fighting for that. We have families that are up here this week, families who've lost young people in the California youth prison system.

And we're asking to sit down with Mr. Warner's ultimate boss, the Governor, and talk to these families. The same way that these wonderful Senators sat down and talked to people who were harmed in his district, the whole State of California is the Governor's district. The young people who are committed to the California Youth Authority as the Governor's children; they are wards of the State of California, the executive branch. These are the Governor's children. These people died in the care of the Governor. We're asking the Governor to meet with them.

And we're asking you, Senators, and Mr. Warner to also send that message.

And we support his confirmation, because we believe that he's going to continue to work with us. We're going to disagree, and we're going to fight. But he wants what's best for the kids and so do we, which is a healthy and safe return home, because that's where they're going.

Thank you for your time.

CHAIRMAN PERATA: Do you want a job?

[Laughter.]

MR. IMANI: I have one, but let's talk later.

CHAIRMAN PERATA: Thank you very much.

Yes, next.

MS. RODRIQUEZ: My name is Hilda Rodriquez, and I'm from Los Angeles, supporting Mr. Warner.

Well my son, we've been asking, you know, to do something. I'm sorry about my English but --

CHAIRMAN PERATA: Relax. We're not going anywhere.

MS. RODRIQUEZ: I'm here because I want to make sure that what happened to our children cannot happen to another family, never happen to other families. Promise they will never happen, that they have passed.

The CYA, they promised us those five bills for two years, and nothing happens. Since then, the fight had died in there, and now my son's been in there, too. And I've been trying to get help for him. It was his first offense, and I was there when this happened. I saw everything with the police and everything. And they still took him, saying that he's a criminal, and this and that.

And he tried to hang himself, too. So one of the doctors -- it was Mothers Day. One of the doctors went out, had to go out to his house to give me the notice that my son tried to take his life away because he was tired. He'd been four years in there. And no one of the [unintelligible] families are helping me.

I'm a single mother. And I try my best. The [unintelligible] don't even want to give me his records or anything.

And I went to the people there at Silmar, and

they didn't -- they just -- I had to fight it to get his records.

So, thank you very much. I'm glad that the doctor went home. He had to go home to notify me on Mothers Day. He said, I'm going to give you this, but they don't allow me to give you this notice to you on Mothers Day, but I'm going to do it because I'm the doctor of your son. And he tried to take his life away because -- you know, and I tried to catch the coworkers to let them know that I saw him Sunday, and he was really upset because, you know, something going on inside, that one of the officers, they didn't like him or something, and he said, "I'm tired of this, Mommy. I'm tired. Please help me."

And they tried to make him to talk because he was abused when he was five years old. In the circle of them when they do therapies, they wanted for him to speak that, and I said, no, they don't supposed to do that. They said you had to talk to them, one-to-one.

He said, "Momma, you have to help me, please."

I say, "You are not through already. You've been there four years," since 16 years old. "You have to talk for yourself."

He said, "Mom, please, help me."

And he wrote a letter to his sister saying, "Sister, help me." She's in the university, a student at Yale University.

And she called me and says, "Is something wrong to my brother?"

I said, "I don't know."

So thank you for letting me speak, and I hope we can get an answer on those five bills.

CHAIRMAN PERATA: Thank you.

Yes, ma'am.

MS. PRESSLEY: Hello. I'm Christina Pressley. I represent the Ward Family Council at Chino.

After the Farrell case, Governor Schwarzenegger mandated that each facility create a council of family members to hold accountable the higher up people in the facilities. So, we meet with them, with the superintendent and others, as you know, once a month. And I'm the representative to Sacramento.

And we do support Mr. Warner. However, there are -- there is a code of silence. It's very evident.

One question I would have for them, you had brought up some questions about certain specific incidences that had happened, which is wonderful, but there was a beating within one of the facilities. I'm sure you're aware of it. It was all over the media.

The ward was handcuffed while two guards beat him. And this was on video, so it got out. Those two were punished, but soon after they were reinstated.

To me, that is unacceptable. They should be fired. Never, ever should you put your hands on a handcuffed boy.

SENATOR BATTIN: Say that again? There was a boy who was handcuffed?

MS. PRESSLEY: Yes, within the youth facilities.

CHAIRMAN PERATA: You said Warden.

MS. PRESSLEY: Oh, I'm sorry. A ward.

SENATOR BATTIN: I'm aware of that case. I was unaware of the warden.

MS. PRESSLEY: Well, they were reinstated, those guards that beat those kids. That is unacceptable, and I really think that's part of what happens with the code of silence. If they get caught, they reprimand, they punish, and they reinstate.

People like that should not be in charge of these youth.

And you're right, they're going to get out. They're going to get out. And some of the laws right now charging youth as adults, and sentencing them to state prison, they're going to get out having been trained to be criminals. And that frightens me.

I also want to say that Hilda's story is not uncommon. It's very common. I see the families every week and have them have these horrific stories about how the guards are treating them with disrespect, with disdain, treating as they're animals, withholding food, withholding medical help. There's a barrage of things that I could talk about.

But I do support what you're doing. I know you're working very hard to get these things done, and programs implemented and such.

The superintendents support you, and so do we.

One of the things that we seriously need are for the programs to be offered. A lot of times the parole boards will add time to a juvenile's sentence if the programs that they

want them to take have not been attended. Yet, they don't offer them. So, they show up for parole. The family's excited. They're going to get their boy home, or their girl home. And then the parole board adds time because there's programs that were not offered. So, we really need some more programing, especially the drug programs. That seems to be the one that we get tripped up on a lot.

I appreciate you listening to me.

MR. WARNER: You can thank the Legislature. Last night they did approve an increase for substance abuse funding as part of our plan.

MS. PRESSLEY: Hallelujah. Thank you.

MR. GOLKA: Good afternoon, Mr. Chair and Senators. Joshua Golka with SEIU Local 1000. We represent the teachers, nurses, and others who work in DJJ.

We actually don't have a position on Mr. Warner's confirmation today, but I do have with me Mr. Jim Boyle, who's a teacher at Chad, and Doug Woods, who's a teacher at Preston who would like to make some comments.

CHAIRMAN PERATA: Please.

MR. BOYLE: Good evening. My name is Jim Boyle. I'm an academic teacher at Chad. I'm also an SEIU job steward.

I'll make my comments brief.

I'm here to speak on behalf of the teachers at Chad regarding the recent assault, violent assault, of one of our teachers.

Our members want it known that they believe that this teacher was not only a victim of a failed system, but also

a statewide, department-wide indifference towards teacher safety in the classroom.

They want it known that they have lost faith in much of the leadership of that department, and have come to see this department as lawless, incapable of following its own policies and procedures, let alone contractual agreements or even court orders.

I heard Mr. Warner talk about the training that teachers get. He brought up numbers of 52 hours of various numbers. I would direct him to the most recent INC manual that we have, Policy 2040 and Policy 2030 that requires a 16-hour orientation immediately before a teacher takes -- takes his position or her position within the institution. That's not happening. It's just not happening.

I've heard Mr. Warner talk about meeting with staff up and down the state. And I will say that today Mr. Woods and I are probably the first teachers to have ever seen his face or know what he looks like.

I've heard him refer to us as support staff. I'm not a support staff. I don't support guards in doing their jobs. The guards are there to -- to make it possible that I can do my job. And I think that's part of the problem, the focus is on -- is not on where it should be. Maybe we're easy to overlook, maybe it's because we don't wear uniforms. I don't know.

We are not taking a position on his appointment, but we are looking forward to talking to Mr. Warner about some of our concerns. But we have to make it very clear that any

dialogue we enter into has to result in meaningful, decisive action so that we can restore -- so that we can both safeguard our members and also restore their faith in this department.

Thank you.

CHAIRMAN PERATA: Thank you.

MR. WOODS: Mr. Warner, my name is Doug Woods. I'm an academic teacher at Preston Youth Correctional Facility.

I was at the town hall meeting a couple of weeks ago when you appeared, and everyone was very eager to hear what you had to say. But you talked at length, and then someone actually had to stand up and begin talking to you because we were running out of time. And people had important things to tell you, Mr. Warner.

I hope that you will visit the Youth Authority -- excuse me -- DJJ facilities, and that you will listen to the staff, because what managers tell you may be what you want to hear. And they may give you numbers, but they don't tell you the quality and the details that go into those numbers, so many hours of training we're given, but what was actually taught within that training, and did it affect behavior, and were people safer that way.

At Chad, there is a classroom which is going to be dark for weeks to come because the teacher was beaten to the floor. She was not adequately trained, I don't think. The staff there don't think so. And I'm concerned things like that might happen at other facilities, too. We can't have any more classrooms going dark, certainly not for reasons like that.

I thank you.

CHAIRMAN PERATA: Thank you, Mr. Woods.

Seeing no one further --

SENATOR ASHBURN: I just have one question.

It relates to the organizational structure that you've agreed to participate in.

You have, without a doubt, an awesome responsibility.

First, could you comment on the lines of authority within the structure that you've hired into? Is it appropriate? Is it adequate? Could it be improved?

MR. WARNER: One of the important components in the reorganization was to have Juvenile Justice very distinct from adult operations.

So, within my area of responsibility, I have three direct reports. One is the Director of Facilities, one is the Director of Programs, and one's the Director of Parole. So within Programs is health care, medical, mental health, education, all the services that we provide.

Within Parole, it's community corrections, parole officers.

And within Facilities, it's the eight facilities and one camp that report to the Director of Facilities.

Those positions report to me.

CHAIRMAN PERATA: Excuse me.

Senator Cedillo has to go and present a bill in the Assembly.

Could I have is a motion and we'll open the roll.

SENATOR ASHBURN: That's fine. In fact, I'll

just terminate questions and we'll take them up later.

I'll make the motion.

CHAIRMAN PERATA: We have a motion to approve.

SECRETARY WEBB: Cedillo.

SENATOR CEDILLO: Aye.

CHAIRMAN PERATA: I don't know that I asked if there was anybody here in opposition? Good. It's working out just right.

Do you have family here?

MR. WARNER: No, I don't, Senator. Thank you.

CHAIRMAN PERATA: Anything further?

Well, I just want to leave you with a couple of things.

Of all the things that we've been looking at since the reorganization, I must candidly say that I don't see things getting better. I see them, if not getting worse, certainly becoming more confusing.

And the emphasis is always on incarceration, and obviously the safety of employees.

That report that came out is something that will be integrated into much of which will be taking place, I guess, during the Special Session.

But I just again want to emphasize that a lot of these talks are about the code of silence, but we all get trapped in that, you know. We all have somebody above us that we're responsible for, and sometimes we have our own code of silence, where we see things and we don't bring it up.

I would just urge you again that I don't think

there's any more responsible or important position in our system than the one that you hold, principally because if there's ever going to be rehabilitation as the emphasis, it will happen in YA. I can't get used to that the other stuff you call yourselves.

It's just heart-wrenching to hear that 16 or 17 year olds find that their life is so hopeless inside an institution that they hang themselves. It's just unfathomable.

I spent 16 years in a classroom teaching. I've had some success stories, but I've had two of my students who were convicted murderers. And one was so emotionally disturbed, but he was in the institution for two years, then he got out, and then he killed his best friend's mother. And he hanged himself in prison.

The second one was there for a short period of time, and he came out and killed two people at a Taco Bell.

And the third one blew her face off.

And I could have told you from my experiences with them in school where they were headed. And we couldn't do anything or didn't do anything in the educational institutions, but when they get to you, that becomes the most critical juncture.

And I know that there's a lot we should be doing, a lot that we need to do, and you're the best hope we've got. So, thank you for doing this. Thank you for your candor.

And I think having the people here that were speaking on your behalf was very impressive. But I sure as hell hope that you'll drop a dime on us -- is it a quarter now --

and, hell, reverse the charges; I'll pay for it.

Please call the roll.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Bowen.

SENATOR BOWEN: Aye.

SECRETARY WEBB: Bowen Aye. Battin.

SENATOR BATTIN: Aye.

SECRETARY WEBB: Battin Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Five to zero.

CHAIRMAN PERATA: Congratulations.

MR. WARNER: Thank you very much. Appreciate it.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 3:07 P.M.]

--ooOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of June, 2006.

EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

Senate Confirmation
Response to Senate Rules Committee Questions
Bernard E. Warner
Chief Deputy Secretary, Juvenile Justice

Mission

Under the 2005 reorganization of the Department of Corrections and Rehabilitation, the California Youth Authority became the Division of Juvenile Justice. The population has dropped to under 3,000 of the state's most troubled youthful offenders while the cost per ward has risen to approximately $165,000 annually. The statutory mission of the division is "to protect society from the consequences of criminal activity and to that purpose community restoration, victim restoration, and offender training and treatment shall be substituted for retributive punishment and shall be directed toward the correction and rehabilitation of young persons who have committed public offenses."

1. ***Please provide us with a statement of your goals. What do you believe are your major accomplishments since your arrival last August? What do you hope to accomplish in the short-term and in the longer term? How will you prioritize the changes you wish to make?***

When I began as Chief Deputy Secretary last August, there was clearly an expectation for juvenile justice reform beyond what any other state had experienced. I have tried to continuously embrace this as an unprecedented opportunity to have a positive impact on enhancing public safety by reducing victimization in California.

When I arrived, the Consent Decree in the *Farrell* lawsuit had been filed for almost a year and three of the six remedial plans had already been accepted by the plaintiffs. However, the most comprehensive plan, now referred to as the Safety and Welfare remedial plan, had not yet been completed. In fact, a team of dedicated staff had only recently been redirected to headquarters to complete this effort. It was very important to me that this effort begin with an agreement about the principles that would guide not only our response to the *Farrell* lawsuit, but also the ongoing reform and management of our entire juvenile justice system. These principles, which were clearly articulated in the introduction to the Safety and Welfare remedial plan, align closely to my own personal goals as Chief Deputy Secretary. They are:

- To have facilities that are safe for staff and youth;
- To develop and implement programs and services for youth that reduce delinquency;
- To establish sound organizational management; and to provide leadership to establish effective partnerships in the California juvenile justice continuum.

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Examples of significant accomplishments since August 2005 are:

- Our proposal for federal Juvenile Accountability Block Grant funds was recently approved by the Corrections Standards Authority (CSA), providing Division of Juvenile Justice (DJJ) with $7.7 million to begin implementation of reforms.
- We have hired a Chief Psychiatrist, Health Care Administrator, Chief Medical Officer, and Chief Psychologist for Northern California. We are in the process of converting a position to a Chief Psychologist position in Southern California.
- The Correctional Treatment Center (CTC) at Heman G. Stark was approved for a provisional CTC license in January 2006.
- Teacher recruitment fairs were held in March 2006, with an unprecedented response. There were over 125 contacts at the March 18th recruitment fair in Southern California and over 90 contacts on March 25th in Northern California. These candidates completed the exam process and now some of these candidates are in the hiring process to fill teacher vacancies.
- A year ago, DJJ facilities did not have a designated Youth with Disabilities Coordinator. Today, every facility has a designated coordinator.
- DJJ was recently awarded a planning grant from AmeriCorps to develop a national model restorative justice service learning program for youth committed to DJJ (to be developed for youth in institutions and on parole).
- Comprehensive remedial plans for Safety/Welfare, Mental Health and Medical Services were prepared as required by the *Farrell* lawsuit.
- After submitting the remedial plans in court, DJJ prepared the budget change proposal for the resources necessary to implement the plan. This proposal was included in the Governor's 2006/2007 budget.
- Since the Governor's Budget, DJJ staff have been working with Facilities Management to identify the space planning needed to implement all six of the remedial plans in our existing facilities, i.e., education and treatment space. Both a minor capital and support BCP were prepared and approved by the budget subcommittees.
- A Request for Information (RFI) was released in April 2006, to identify existing and/or potential capacity to serve female offenders outside of DJJ facilities. Dependent upon budget approval, a Request for Proposal (RFP) will be issued in fiscal year 2006/07.
- DJJ has been drafting an RFP for a risk/needs assessment, the cornerstone of our treatment model. We were waiting for final modifications from the experts' report. The RFP should be released within 30 days. DJJ is working with counties to establish statewide definitions in these assessments to better define the appropriate type of services for the at-risk population.
- DJJ has created a work group with local stakeholders, including representatives from the Chief Probation Officers of California (CPOC) to address issues and concerns around DJJ's conditions for accepting and rejecting youth referred from the local courts.

- DJJ has been working with national experts to develop interim plans to address some of the outstanding issues in the *Farrell* lawsuit. For example, in December, DJJ implemented an interim plan to close the temporary detention unit at O.H. Close.
- As a result of closing intake at N.A. Chaderjian (Chad) in August 2005, and reducing living unit sizes at that facility, the student absentee rate at school has decreased by 50%; extended lockdowns have ended; and the rate of staff assaults and youth-on-youth batteries has decreased significantly.

Short and Long Term Priorities

My first priority is to reduce the levels of violence against youth and staff within our facilities. As the experts in the *Farrell* lawsuit have continued to highlight, DJJ must prioritize this goal. I believe the resources we requested as part of next year's budget will provide us with the foundation necessary to begin accomplishing this. Over the longer term, however, the Department has the opportunity and, I would argue, the responsibility to affect public safety beyond the walls of our facilities. We can do this by reducing the likelihood that the youth committed to our care will re-offend when they return to their communities. We can further enhance these efforts by working with State and local partners on strategies dealing with re-entry and crime prevention.

The short term priority, ensuring safe and secure facilities within DJJ, will be achieved through reduced living unit sizes, enhanced staffing ratios, conflict resolution teams, training, strategies to separate higher and lower risk youth, and greater access to programming for all youth at DJJ. The improved facility safety that resulted from my limiting the intake of new admissions to Chad over the past nine months should encourage us that it is possible to make significant strides in short periods of time. Our challenge is to sustain those changes and to extend them throughout the rest of our facilities.

The longer term goal, making California's communities more safe, will be achieved only through enhanced working relationships with our external partners, including legislative leaders, law enforcement, probation, families, and community advocates. Our remedial plans include many of the key elements that will be needed to accomplish this goal, including an integrated treatment model specifically designed to identify risk and protective factors and a commitment to work with individual youth and their families to reduce their risk of re-offending. DJJ must make it a priority to ensure that youth leave our system with the attitudes, values, and behaviors necessary for a productive and crime-free lifestyle. Truly sustainable change will require a much stronger juvenile justice continuum. Less than one half of one percent of the youth who come through California's juvenile justice system each year end up at DJJ. The rest remain in their communities or other out-of-home placements. The State, in particular the Division of Juvenile Justice, should take a much stronger role in strengthening this system and ensuring improved outcomes for all youth who encounter this system.

For a better understanding of how we will prioritize specific issues and/or steps related to these goals, please refer to question 6, which discusses the process we are currently undertaking to develop a critical path implementation schedule.

2. Please describe the experiences in your professional life that prepared you to lead the Division of Juvenile Justice.

My 26 years in the corrections field have been intentionally diverse. I have worked in almost every aspect of the criminal justice continuum—probation, detention, residential services, and parole. I have worked with both adult and juvenile offenders. My correctional experience in four different states has provided me with exposure to different system approaches. I have worked at both the state and local level, as well as in the private sector as the Executive Director of a non-profit social services agency. Through all of this experience, I have studied the development and implementation of effective correctional practice. I have seen both good and poor execution of juvenile services. I believe this knowledge base will be critical as California continues down the path of major reform.

There are two specific examples of my experience with juvenile justice that I think will be particularly helpful at DJJ. 1) I participated in the implementation of the Juvenile Accountability Act in Washington State that has led the way nationally to the implementation of risk/need instruments designed to target juvenile offender needs; 2) I was responsible for the development of evidence based "blueprint" programs for youth in the State of Florida. These programs provided effective community interventions for youth probation/parole violators who would have normally been returned to a secure facility.

3. Please describe what steps you have taken since the reorganization of last year to ensure that your employees in both DJJ institutions and parole offices have direct and effective access to you and your senior staff for addressing issues that arise in the field.

With over 3,400 employees at DJJ, I have tried to set up systems within the organization to ensure that I have the understanding necessary to address issues in the field. On a weekly basis, I meet with key managers within DJJ to include the Director of Facilities, Director of Parole, Chief of Juvenile Justice Policy, Superintendent of Education, Chief Medical Officer and other staff as necessary. In addition, I conduct monthly Superintendent Meetings, held at a different DJJ facility each month, to address facility operational issues.

Beyond that, I have toured every DJJ facility and met with their management teams. I have conducted "town halls" at half of the DJJ facilities to present the proposed *Farrell* reform plans and to address any questions staff may have. These forums are attended by as many as 200 staff.

I have also conducted meetings for specific classifications of staff to get input on reform. Examples of these forums are meetings for School Principals and Chief Security Officers.

I have met with every parole office supervisor to become informed on issues they face in the community. I participated in a major parole planning event—the Transfer of Knowledge Workshop held at the Kellogg Conference Center located on the Cal Poly Pomona campus entitled "Parole Reentry: A New Vision." At this meeting, a vision of what parole was to become was shared with Parole and Juvenile Facilities staff, significant community leaders and stakeholders, as well as with experts from the disciplines of juvenile justice, education, mental health, employment development, and social welfare. All participants were introduced to a behavioral management model of community supervision, followed by group sessions to support collaboration and exchange of best practices in distinctive areas of expertise. The principal objective for all participants was to discuss and contribute to building the foundation for an innovative approach to community supervision that emphasizes parole service delivery systems founded on evidence-based measurable outcomes.

4. ***Please describe your involvement, if any, with the Board of Parole Hearings commissioners responsible for conducting DJJ hearings. As you know, Penal Code section 5075.1(j) provides: "Effective January 1, 2007, all commissioners appointed and trained to hear juvenile parole matters, together with their duties prescribed by law...are transferred to the Chief Deputy Secretary for Juvenile Justice." Please describe what steps you are taking to prepare for this transition.***

When we first began working on the Safety and Welfare Plan last summer, we included Board of Parole Hearings (BPH) Commissioner Chuck Supple, to represent the perspective of the BPH. He was a critical member of our reform team and provided valuable input. As new commissioners are being appointed, we are scheduling meetings with my management team to discuss DJJ issues. I intend, in the near future, to establish more regular meetings with the BPH. Initial meetings will be focused on briefing the Commissioners and Hearing Officers on DJJ reform plans. On-going meetings will address other parole and parole-readiness issues. Again, my intention is to formalize a process for ongoing communication between DJJ and BPH around critical policy and program issues, particularly as we move closer to the January, 2007, transition.

5. Please describe your current and ongoing involvement, if any, with county probation officers and juvenile court judicial officers in discussing general or specific policy issues relating to improving California's system of juvenile justice and the role of DJJ in that system.

Given my background in community corrections and my experience with other systems in which the State was responsible for more than just the secure correctional facilities, I came to California with an expectation that no part of the juvenile justice system can operate in isolation from the others—the State, counties and courts are all in this together. As a result, I have a made a very concerted effort over the past 10 months to meet with many representatives from the courts, including judges, Public Defenders, District Attorneys and Chief Probation Officers from across the State as well as their staff.

For example:

- Last fall I met with a committee of 10 presiding juvenile court judges to discuss *Farrell* and other juvenile justice policy issues. I have continued to stay in contact with Judge Michael Nash, the presiding Juvenile Court Judge, and others on a regular basis.
- I meet quarterly with the Chief Probation Officers of California and created a work group, at their request, to resolve issues on DJJ acceptance/rejection criteria.
- I gave a presentation on juvenile justice reform at the California District Attorneys Association's annual training in December.
- I presented on *Farrell* reform at the Beyond the Bench Conference to over 1,000 court participants.
- I presented to statewide County probation supervisors this spring.
- Pursuant to Judicial Council Rule 1479 from 2004, we made a concerted effort to facilitate Public Defenders in being able to properly represent their DJJ clients in post adjudication matters. Specifically, I met with statewide representatives of the various Public Defenders offices in April of 2006. A joint DJJ – Public Defender workgroup was formed to formally address a variety of mutual concerns and develop strategies to resolve those concerns.

As I suggested earlier, I am committed to understanding and respecting DJJ's role within a much larger juvenile justice continuum. I believe the State should be a leader in that continuum.

Farrell Case

Under a 2004 consent decree, in *Farrell v. Allen*, the State agreed to improve living conditions, mental health care, education and rehabilitation programs in DJJ institutions. A team of outside experts agreed upon by the Administration and the plaintiffs described a broken system with unsafe conditions for wards and staff, lengths of stay almost three times the national average, information systems incapable of supporting management and enormous costs with few positive results. They recommended major changes based on smaller living units and significantly increased treatment and rehabilitation programs.

6. Please describe how you will translate the report's recommendations into actual change. What is your specific timetable for implementing this change?

When the Department filed its preliminary Safety and Welfare remedial plan on December 1, 2005, we agreed in a Stipulated Agreement to hire five national experts to review the plan. Their recommendations were made public in early April. I was impressed by their work. They took their charge very seriously and spent considerable time both in our facilities, as well as meeting with key stakeholders. They were committed to making improvements to the State's plan, not just to making recommendations for the sake of making recommendations.

In many ways, their final report validated the Department's proposal, particularly when considered with the accompanying budget proposal, which included many of the details that were not originally filed in court. One of the key recommendations in the experts' report was to prioritize reducing violence in the facilities. The experts' recommendations, along with a request from the Senate Budget Subcommittee, have helped us to modify and prioritize our implementation strategy to target comprehensive reform, one facility at a time.

Specifically, DJJ staff are currently in the process of developing a critical path implementation schedule for *Farrell* reform. This critical path is identifying every living unit that will be phased-in next year and each step required to bring that living unit on line, including recruitment, hiring, training, labor negotiations, physical modifications, etc. Over the next few weeks we will incorporate all of the elements of the Safety and Welfare remedial plan, as well as the other five remedial plans into one critical path schedule. As you are well aware, the state has undertaken a massive effort and committed to going beyond just the original deficiencies identified in the lawsuit. This implementation schedule will help us track daily which steps are on target, which ones are at risk, which need additional time, which will critically impact the rest of the schedule, and which can be safely postponed without having an adverse impact on implementation timeframes.

Based on a preliminary schedule, we estimate the following key milestones for next year:

- DJJ will have Conflict Resolution Teams fully established and operating at five facilities by October 2006.
- N.A. Chaderjian will continue its conversion to a fully specialized treatment institution and will complete the transition by June 2007.
- The first Core Treatment Facility will be established, with the first living unit coming on line by March 2007, and the full facility conversion being completed by June 2007.
- Four Behavior Treatment Programs, located in Southern California, will be fully established by June 2007.
- Two Behavior Treatment Programs, located in Northern California, will be fully established by June 2007.
- The first Re-entry Unit will be established at the Core Treatment Facility by June 2007.
- Risk Needs Assessment will be implemented by June 2007.
- Phase-in will begin at the second Core Treatment Units in the Spring of 2007.

During Phase II (Fiscal Year 07/08), DJJ will complete phase-in at the second and third Core Treatment facilities.

During Phase III and IV (Fiscal Years 08/09-09/10), DJJ will complete phase-in at the remaining facilities.

7. Please describe what you believe DJJ will look like a year from now and five years from now.

One year from now, you will be able to walk into two of DJJ's eight facilities and find a markedly different environment. By the end of the next fiscal year, we will complete the conversion of Chad to a specialized treatment facility. Chad will no longer serve as the "end of the line" facility as it once was. Instead, it will be comprised of specialized programs for youth with mental health needs and for youth needing sex behavior treatment. Chad will also provide reception or intake units for Northern California youth over 18. The Special Management Programs (SMP) will be phased out; the gang violence will be noticeably reduced; and trained staff will be providing intensive interventions for some of DJJ's highest need youth.

By next June, you will also be able to walk through one of DJJ's new "Core Treatment" facilities and find youth programming outside of their rooms for almost every waking hour. In this facility, where DJJ will first begin phasing-in the components of the Safety and Welfare Remedial Plan, youth will live in smaller living units. Instead of walking into a unit and finding two staff patrolling the floors to "keep an eye on" over 50 youth, you will find youth programming in small groups (approximately 8-12) with direct staff

interaction. You should find all youth engaged in a meaningful activity. You will not yet find full implementation of the new treatment model, but you should notice a difference in the way staff are able to interact with youth, engage them in group discussions, and promote a positive "normative" environment on the living unit. You will find conflict resolution teams helping to de-escalate potentially violent situations. Behavior Treatment Programs will replace the SMPs, where youth will receive intensive treatment to prepare them to return to their home units. Re-entry specialists will be assigned to each youth, who will begin re-entry preparation activities upon entry, which will include family and community engagement.

Five years from now, you will be able to walk into any DJJ facility and ask to see the individual treatment plan of a young person living there. In that plan, you will find a comprehensive analysis of the risk factors related to each youth's delinquent behavior as well as the protective factors (or strengths) being built upon to prepare the youth for successful re-entry to the community. You will see that staff have been in regular contact with the youth's family and/or community supports and that family members have, in fact, been involved in the development of the treatment plan. You will see, no matter how long a youth has been at DJJ, a comprehensive rehabilitation and re-entry plan in place, which highlights the youth's progress since arrival—are the risk factors decreasing? Are protective factors increasing? Are strengths being built upon? If not, what is the multi-disciplinary team, including a Case Manager, Psychologist, Youth Correctional Counselors, Teachers, and others doing to modify the program accordingly? The plan should identify the youth's pro-social goals for the future and define a clear path for reaching those goals. Youth should be able to articulate how the skills they are learning will assist them upon release.

When you walk through the living units you will discover that higher risk youth are housed separately from lower risk youth and that each are receiving programs and services targeted for their risk category. You will discover that within our existing facilities we have modified the living units or built modular space to provide dedicated areas for youth to meet in smaller groups or individually with staff. You will visit re-entry units where all activities are focused specifically on transitioning youth to the community. You will notice that violence and use of force are rarely issues and as a result, youth will be spending less time in our facilities because they will no longer be receiving an average of nine months for disciplinary "time adds."

You will be walking through a system that is on its way back to being a national leader in juvenile justice.

And, if the Legislature approves design and construction, five years from now you may even walk into a brand new prototypical juvenile facility…

8. Is there an exit strategy for reaching final settlement and removing the special master who oversees the settlement?

As required by the *Farrell* Consent Decree, all remedial plans filed with the court require a Standards and Criteria section. The Special Master and experts (court monitors) regularly report on the implementation and compliance with all remedial areas. The Special Master and the experts are required to use the Standards and Criteria sections for each remedial area that has been approved by the court in evaluating progress and reporting on implementation and compliance with the remedial plans. The consent decree establishes a mechanism for dismissal based upon a standard of substantial compliance within a remedial plan area by each facility. Once a facility is found to be in substantial compliance on an issue for one year and remains in substantial compliance for an additional year, monitoring tours will end, at the specified facility, with respect to the remedial issue.

Our ***exit strategy*** is to develop a comprehensive project management plan that outlines the critical path for all remedial areas. In the next fiscal year, we will hire staff dedicated to compliance and project management. This plan, together with sufficient resources to manage the implementation process and compliance issues, will bring us toward substantial compliance with all remedial areas. Once substantial compliance has been obtained in a remedial area, the DJJ will move for dismissal in the remedial area.

Housing and Living Conditions

In January, the Corrections Standards Authority reported that lack of physical plant maintenance and poor design have helped to create unsafe environments at several DJJ facilities. Locks that can be defeated, lack of floor drains, inadequate fencing, and inoperative plumbing were among the items mentioned.

9. What steps are you taking to address these issues?

Each of the institutions that have been the subject of CSA evaluations (Chaderjian, Preston, O.H. Close, DeWitt Nelson) has prepared corrective action plans. These plans are updated every quarter and reviewed by the Division of Juvenile Facilities. As of this date, 80% of the CSA recommendations have been implemented.

The most difficult recommendations to complete relate to physical plant concerns. The concerns are outgrowths of the age of the facilities, the design of the facilities, the lack of continuous maintenance, and the lack of funding for major repairs/projects.

In this area, we have stepped up our efforts by:

1. Convening a "Plant Operations Summit" at Stockton in April 2006, to review and document all outstanding issues related to major capital outlay, minor capital outlay, and special repairs for the Stockton complex. The meeting included facilities planning staff, superintendents, budget staff, plant operations staff, and juvenile facilities staff. The meeting produced a comprehensive list of plant operation issues in the major capital outlay, minor capital outlay, and special repairs areas. We will duplicate this process for the Southern California institutions and the remaining Northern California institutions.
2. Obtaining $7.7 million in Juvenile Accountability Block Grant Funds of which $5,673,049 was designated for infrastructure improvements (modulars, repairs, radios, etc).
3. Budget proposals for $8.7 million for capital outlay improvements and $3.0 million for special repair and deferred maintenance in Budget Year 2006/07.
4. DJJ will contract with an architectural expert (Patrick Sullivan) on plant design issues and facilities planning, as committed in the December 2005 Stipulated Agreement in the *Farrell* lawsuit. We have also hired a firm to evaluate plant operations issues in the Stockton complex.

10. What is the current goal for the number of offenders on a living unit?

Living unit sizes will vary depending on their specific mission. The ranges are:

Behavior Treatment Programs: 24
Intensive Behavior Treatment Programs: 25
Intensive Treatment Programs: 30
Special Counseling Programs: 30

Substance Abuse Treatment Programs: 36-38 (depending on risk level)
Sex Behavior Treatment Programs: 36
Core Treatment Programs High Risk: 36
Core Treatment Programs Low Risk: 38

11. As population decreases, what plans do you have to close or convert facilities?

In order for DJJ to reduce living unit sizes to the numbers indicated above, we will need to use all of our existing living units, including those that are currently closed. It is important to keep in mind that placing youth in the appropriate living requires us to look not only at their age and gender, but also at their risk level, treatment needs, and county of origin. We cannot simply take our current population and divide it by the total number of living units.

Even though our current population projections anticipate that the population will continue to decrease, the rate of this decrease is slowing down and some stakeholders have suggested that our population may begin to increase as the perception of DJJ's programs begin to improve.

If DJJ's population continues to decrease, I will evaluate the option of keeping all facilities open and reducing living unit sizes further. As the experts have indicated, even though we will benefit from reducing the living unit sizes to the numbers indicated above, these are still higher than national standards.

***12.* You have previously indicated interest in moving female wards from the Ventura facility to the community. What are your specific plans for the Ventura facility? What is the status of efforts to move female wards into local facilities?**

Consistent with reform, DJJ must provide gender responsive programming that is developmentally appropriate for girls and young women, whether housed in DJJ or housed outside of DJJ facilities.

As we committed in the original draft of the Safety and Welfare remedial plan, we issued a Request for Information (RFI) in April 2006, to help identify existing and/or potential capacity for secure residential services for girls and young women committed to DJJ in placements outside of DJJ facilities. The RFI was distributed to Juvenile Court Judges, Chief Probation Officers, substance abuse providers, County Alcohol and Drug Treatment Directors, California Mental Health Directors Association, County Welfare Directors Association, California State Association of Counties, and Community Residential Care Association of California.

DJJ is taking this issue very seriously and therefore is consulting with nationally known experts in gender responsive programs and services. Based on the responses we received to the RFI (due May 31, 2006), we will determine the merits of issuing a Request for Proposal (RFP). Dependent upon this review and Legislative budget authority, the anticipated release date of the RFP will be September 2006.

Dependent upon the outcome of the RFP and the availability of appropriate placements outside of our facilities, the Ventura facility may be converted into a facility for young men committed to DJJ, enabling us to reduce living unit sizes in other male facilities.

Staffing and Training

Over time, the experts said, the juvenile system has come to reflect a miniature version of the adult prison world. Without the capacity to manage reform, they said, changes will not occur in organizational structure and appropriate management culture.

13. What changes do you expect of DJJ staff as you move to a different model? How will you help them make the changes that are needed? What is your timetable for this significant effort?

The majority of existing DJJ staff are committed to fully implementing a rehabilitative model. For long-term meaningful change to take place, staff at every level will need to recognize that rehabilitative efforts are the responsibility of all staff and should be a main focus for every interaction with youth. DJJ will focus on creating an environment that supports staff efforts to assist in motivating the youth toward pro-social goals and activities.

Some of the strategies we will implement to accommodate change include reducing living unit sizes from over 50-60 youth per unit to 24-38, depending on the program, and increasing staff to youth ratios. This will allow staff more time for meaningful interactions, will allow for smaller groups and decreased caseloads. In addition, we will be implementing a comprehensive Risk/Needs Assessment completed by dedicated Case Managers trained in motivational interviewing. These Case Managers will facilitate multi-disciplinary teams and reassess the youths' risks, strengths and skills on a regular basis.

We are developing daily schedules that incorporate all services, including increasing treatment from a minimum of four hours per month, to at least 40 hours per month. In addition, we will better define roles and responsibilities, develop clear expectations, with identified measures of success for youth and staff, and will provide clinical oversight to the rehabilitative efforts of all staff.

Training staff will be a critical component to our success. Staff will be provided training on Brief Interventions and other Motivational Enhancement Techniques, contingency management, offense/behavior chain analysis, and skill building techniques to address deficits. Staff will be trained on how to implement the new model using the Principles of Effective Intervention as a framework. Training will include "What Works" and best practices.

DJJ will be training a cadre of staff trainers, to develop internal expertise in all areas of core rehabilitation. These trainers will train staff, provide on-site support after the training, assist supervisors and managers with oversight, auditing and additional training as needed, and serve as a statewide committee to recommend system changes needed

to support the new model. Trainers will provide on-the-job coaching and mentoring to reinforce skills learned in training.

DJJ will be implementing a quality assurance/improvement model, which includes data review, policy enforcement, recognition for quality work, and responsive services (training, policy changes, etc). This cadre of staff will be an integral part of that model.

The new model will be phased in over four years. Each new unit brought on will include the new staffing ratios and reduced living unit size. As a facility is phased in to the new model, existing units will received enhanced staffing and reduced living unit size. Five of the facilities will receive conflict resolution teams in the first year.

Training for trainers will occur during the first year. Those trainers will provide training to staff assigned to the new core units as the units are phased in.

Staff assigned to new functions, such as conflict resolution teams, will be provided initial training prior to facility assignment during the first year (for five facilities). DJJ is preparing a critical path for implementation of the remedial plans.

14. What is your current estimate of the number of new staff you will need to carry out your reform plans? How is your agency assisting you in ensuring they will be available?

Based on the most recent estimates, implementation of the Safety and Welfare remedial plan alone will require approximately 380 new PY's (personnel years) and over 800 for all plans in fiscal year 2006/07. By the time all of the remedial plans are fully implemented in FY 2009/10, we estimate almost 1,400 new staff will be added to the Department, including approximately 745 for Safety and Welfare, 275 for Education, over 200 for Mental Health, over 100 for Health Care, approximately 50 for Sex Behavior Treatment, and approximately 11 for Wards with Disabilities.

The CDCR Human Resources Office is assisting DJJ in obtaining new staff to carry out the reform efforts. The Office of Workforce Planning is involved in the recruitment and selection process. They are currently involved in preparing job advertisements, recruitment efforts (including facility workshops, conferences, job fairs, contacts at universities) and expedited examinations in order to ensure a candidate pool is available in a timely manner to carry out reform plans.

The Office of Peace Officer Selection is taking applications on a continuous basis for the various peace officer classes and obtaining the appropriate background clearance to provide candidates for the scheduled academies.

The Office of Personnel Services will then facilitate the establishment of the new positions, advertisement of vacancies, and processing hiring documents, once candidate selection occurs.

15. The experts recommended that DJJ have its own training staff and training facility. Do you agree or disagree with this recommendation and why?

The Department, through the Office of Training and Program Development, has created a framework for staff development that encourages common and shared training experiences where appropriate, but one that also recognizes the unique needs of the many distinct missions within the Department.

Currently, the juvenile training academy for entry level peace officer cadets remains intact. DJJ instructors provide all training and the curriculum has remained essentially the same with some minor updates. There are no situations where DJJ cadets are co-mingled with adult cadets for training purposes. The substantive change since the reorganization is that our cadets are now housed at Galt rather then Stockton. While there have been some planning efforts around efficient use of academy resources, no final decisions have been made related to the final structure of future DJJ academy training.

With respect to non-academy training, through the merging of CDCR training resources, we have been able to broaden the participation of DJJ staff in a variety of training programs such as:

- Statewide needs assessment for DJJ pursuant to the *Farrell* lawsuit;
- Increased management, leadership and ethics training options;
- New supervisors training;
- Revised non-custody staff orientation and safety training for institutional staff;
- Centralized curriculum design.

16. What is your current use of mandatory overtime and how do you expect it to change in the coming year?

The best solution to reducing mandatory overtime is by filling all of our vacancies and establishing a healthy pool of intermittent employees to fill behind short term absences, vacations, sick leave, etc. From the chart below, you can see that during times when we have had large number of cadets graduating (fall of 2005), we were able to significantly reduce overtime. However, unless that level of new cadets is maintained, the attrition rate exceeds the number of new hires.

To address this, we have implemented a two-tier strategy for the recruiting and hiring of new Youth Correctional Counselors and Youth Correctional Officers. The Division of Juvenile Facilities has established an aggressive recruitment expectation for each facility and the facilities are being monitored on a monthly basis. These local

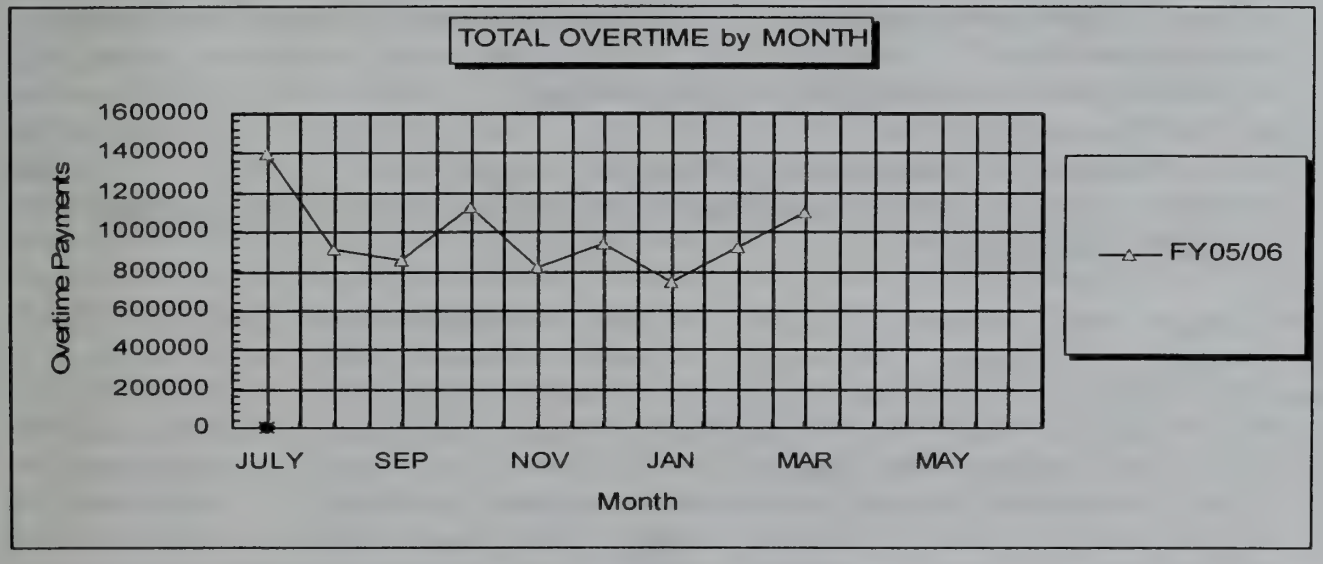
recruitment efforts are being supported by regular newspaper advertisements and internet advertisements placed by the Peace Officers Selections Unit. These two units are meeting on a regular basis to determine facility needs and are monitoring the application and pre-employment process.

The next step is conducting 16-week academies for new cadets. Our next academy class starts June 26, 2006, with academies scheduled to begin on July 31, 2006 and September 25, 2006.

This aggressive plan represents a substantial commitment to resolving the mandatory overtime problems/costs we have experienced in the past and represents an improvement in our YCO/YCC selection efforts since my arrival.

OVERTIME INFORMATION as of May 5, 2006
TOTAL MONTHLY OVERTIME BY FISCAL YEAR

	JUL	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
FY 04/05	0	0	0	0	0	0	0	0	0	0	0	0
FY 05/06	1,396198	902,995	848,067	1,121,500	813,053	937,188	740,994	914,524	1,091,635			



Programs and Education

Teacher vacancies, class closures due to vacancies and/or violence at facilities, and little vocational program are all mentioned as contributors to the problems at DJJ facilities. Inadequate library facilities and limited access to them are also typical.

17. Please select one DJJ facility and identify what educational, vocational, recreational and self-help programs exist now and what specifically is being done to enhance those programs. If we visited this facility one year or three years from now, how would you want these programs to look?

In order to understand the scope of our reforms, let us take N.A. Chaderjian as an example.

On June 1, 2005, Chad's population was 534 youthful offenders. The facility was comprised of six living units, two "halls" on each, including:

- Two separate restricted program units (Special Management Program, Court Hold, and Temporary Detention)
- Two mental health programs (Intensive Treatment and Specialized Counseling Programs)
- One Residential Sex Offender Treatment Program
- One Orientation unit
- One Residential Substance Abuse Treatment Program
- Five "general population" units, placement driven primarily by gang affiliation and/or violence level

Staff assaults were increasing throughout the year, culminating by the year's end at 56 documented staff assaults. The activities of youthful offenders entrenched in the gang mentality were significantly impacting the daily operations of the facility. In June 2005, the N.A. Chaderjian (NAC) High School lost its Western Association of Schools and Colleges (WASC) accreditation, based summarily on a lack of permanent leadership, low morale, excessive vacancies and lack of service provision. In May 2006, the WASC accreditation team returned to NAC High School to determine progress in the above mentioned critical areas of concern. The initial report indicated considerable improvement had been noted and the prognosis for a reinstatement of accreditation is positive. On May 12, 2006, the WASC chairperson forwarded to the Principal the review report which was very positive. The school now awaits the final answer as to whether Chad will receive their accreditation.

On August 12, 2005, I stopped intake at Chad for essentially all but mental health, sex offender and exceptional need transfers. In August 2005, a young man at Chad committed suicide, which brought additional turmoil and review to the facility. Audits by

the Office of the Inspector General and the CSA, as well as the *Farrell* lawsuit, continued to identify significant deficiencies and problem areas at Chad.

By December 1, 2005, due to the stop of intake, the population had decreased to 359 youthful offenders, a 32% decrease in six months.

As of June 1, 2006, the population at Chad was 314 youthful offenders. Staff assaults have dropped dramatically, at this point in time numbering seven since January 2006. Morale at the facility improved with many staff returning to work from long-term absences (IDL), a decrease in sick time usage, and a more consistent attendance rate. Numerous vacancies have been filled, including administrative positions, and new vocational classes are also opening this month. In March 2006, NACYCF received the function of housing and processing parole violators (previously done at DeWitt Nelson YCF); this process has been assimilated well (filling two halls) and there have been few if any difficulties.

Over the next fiscal year Chad administration and staff are preparing for additional changes in the population and mission of the facility. The methodical redefining of the mission of Chad to that of a special program facility will present challenges, but will also create a facility with the resources and staffing to change the lives of its youth. The "general population" units – referred to as "core programs" in the reform effort – will be transferred to other facilities. The existing mental health programs from Preston, as well as the over 18-year-old intake, is expected be relocated to Chad. The Sexual Behavior Treatment Program from O.H. Close will also be moved into Chad. Populations on each special program will be smaller and better suited to create a treatment milieu facility-wide. Proposed renovations and additional treatment space will enhance all youths' access to services, and will improve both the working environment of staff and recruitment and retention efforts.

The facility will benefit in many ways from the influx of mental health professionals, increased training of all staff in treatment modalities, inclusion of families in treatment services, and the anticipated improved safety of the facility which comes from treating the core issues of the youth. The academic and vocational programs will also be delivered with less disruption, and the decreased numbers will allow teachers the time to provide appropriate services to these difficult populations. All youth will have broader and widespread access to academic and vocational classes, as well as work experience within the facility.

Specifically with respect to library services, DJJ is addressing the deficiencies and problems with library services. Beginning in fiscal year 2006/07, Education Services will assume full responsibility for law libraries, including tracking needs of updated/current materials, managing the budget regarding materials purchases, and audits for access and materials compliance. Once DJJ receives fiscal year 2006/07 budget authority, Education Services will collaborate with CDCR in a joint contract to replace print law

libraries with electronic/internet libraries. In terms of improvements to general library services, beginning July 1, 2006, many libraries will be established on each living unit and will include curricular books, pleasure reading and research materials. Each librarian will create a two-fold system/process for enhancement of law library access, including an established time slot for student attendance and copies of materials for students with limited access.

18. How many teacher vacancies exist currently? What efforts are underway to fill them? What is needed to attract teachers to your system? Does DJJ recruit or are you assisted by others within CDCR?

DJJ's current teacher vacancies are as follows:

Schools		Vacancies
a.	Jack B. Clarke(SYCRCC)	7
b.	Dewitt Nelson	13
c.	Johanna Boss(O.H. Close)	4
d.	Chaderjian	10
e.	Mary B. Perry (Ventura)	0
f.	Marie C. Romero (Paso)	0
g.	Lyle Egan (Stark)	35
h.	James A. Wieden (Preston)	11
		70

Two education recruiting days were held on March 18 and 25, 2006, one at Lyle Egan High School and the other at the Stockton Training Facility. All schools are in the process of interviewing for vacant positions and it is projected that vacancies will be filled by June 30, 2006.

A budget proposal was submitted to the Legislature to adjust teacher salaries, which are now commensurate with county offices of education, effective April 2006. As a result of this salary change, many candidates, approximately 200, have applied for these positions.

CDCR's Office of Workplace Planning and Selection (OWPS) has been assisting in the recruiting process. The DJJ/Education Services and OWPS collaboration resulted in a two-day workshop, mentioned above, with over 250 applicants.

19. What efforts are currently underway to enlist volunteers to bring activities to your facilities? Do you receive any assistance from CDCR's Division of Community Partnerships?

We have initiated dialogue as to how the Division of Community Partnerships can effectively link potential partners with the key organizations within the Juvenile Division. We will continue to explore ways to integrate our knowledge and efforts with the Juvenile Justice goals and strategies where appropriate.

In the meantime, Juvenile Justice Facilities use the services of volunteers from the community in a number of ways. Volunteers comprise each facility's Citizen Advisory Committee and its Ward Family Council.

Three longstanding programs utilizing volunteers in facilities are: Match-2 Sponsors; Foster Grandparents; and the Volunteers in Parole Program. Match-2 sponsors mentor individual youth. Foster Grandparents tutor youth and provide mentoring to individual youth. Volunteers in Parole participants are attorneys who volunteer their time to provide mentoring to youth during their facility stay and while on parole.

Volunteers from a variety of faith-based groups have traditionally provided individual religious counseling, religious services, and religious programs to youth. Facilities have hosted inspirational or motivational speakers who volunteer their services for a variety of purposes.

DJJ's Safety and Welfare Remedial Plan includes Volunteer/Positive Incentive Coordinators. In the current system, even those facilities that have Volunteer Coordinators do not have dedicated positions for this. In the new strength-based model that DJJ is developing, the role of this person in bringing in community based programs and tying this to the positive incentives program will be critical. Additionally, I am very excited about DJJ's opportunity to apply for an AmeriCorps grant to develop a model service learning program for incarcerated youth. A few months ago, DJJ applied for and received a planning grant from AmeriCorps, enabling us to move to the next stage of the grant process. If DJJ receives the final grant award (application is due at the end of October), we will develop a model restorative justice program that will involve DJJ youth in service learning activities within the institutions and while on parole as a means to develop knowledge and skills and fulfill restorative justice goals.

20. As you move to a different program model, how will vocational programs change? What are the plans to help wards develop job skills?

All DJJ students need 200 credits to graduate, sixty of those credits are elective and most of them are earned in vocational programs. Students needing elective credits are placed in vocational programs. There are minimal placements for graduates at this

time. However, after June 30, 2006, more vocational programs will be available to graduate students as a result of the Education Services remedial plan.

Current vocational programs include:

Vocational Classrooms

Janitorial
Office Technology
Computer and Related Technology
Culinary Arts
Electronics
Mill and Cabinet
Welding
Carpentry
Landscape
Computer Technology (Two Classes)
Auto Mechanics
Barber Shop
Building Maintenance
Printing Graphic and Arts
Dog grooming
Stock and Warehousing
Heating, Ventilation, and Air Conditioning, and others

As part of the Safety and Welfare Remedial Plan, DJJ has proposed to establish an additional Vocational Specialist at each facility- in fiscal year 2007/08 in order to build upon these services within the new treatment model.

Health

As part of the *Farrell* settlement, the division has sought $7.5 million and 90 full-time positions. Under the settlement, the DJJ is required to improve the quality of care and treatment provided to wards.

21. What do you see as the biggest health risk facing juveniles in your custody? Who is in charge of your health care decisions and who will ensure that medical and dental needs are being addressed?

Various mental health issues, including post traumatic stress disorders, comprise the largest number of health issues facing our youth. The biggest medical issues facing DJJ youth are acute and chronic aspects of physical trauma incurred both before and during placement in DJJ. Youth impulsiveness and hyper-vigilance, plus gang affiliation, result in fighting which causes physical injury to youth. A variety of chronic illness such as asthma, diabetes, seizure disorder and menstrual disorders require ongoing care throughout the patient's stay with DJJ.

The DJJ Medical Director has overall responsibility for medical, dental and mental health needs. At each facility the Chief Medical Officer is responsible for all aspects of health care delivery with the exception of dental services which are under the direction of the three Chief Dentists.

22. The top two health administrators at CDCR indicated they have had a few discussions with DJJ about health care but are not actively involved in your care delivery. To what extent are DJJ and CDCR achieving cost savings by coordinating drug purchasing, hospital contracts or other efforts?

While the Director of the Division of Correctional Health Care Services (DCHCS) has no direct responsibility for management of the juvenile health care system, it is in the best interest of the state to assure that the two programs coordinate and collaborate on a variety of common issues and concerns. To that end, the Director of the DCHCS and the Assistant Secretary for Health Care Policy will be working with the DJJ to identify and implement initiatives that can be of benefit to both organizations.

For example, the Department may be able to achieve increased economies of scale by combining adult and juvenile purchasing of pharmaceuticals, supplies and equipment, combined hospital rate and service negotiations, the provision of telemedicine services and combined contracting for ancillary services such as laboratory services.

We are beginning to coordinate important health care functions at this time. The DCHCS is currently reviewing a series of medical policies and procedures developed by DJJ to assure that there is consistency and standardization between the two health care programs where appropriate. In addition, it is the Department's intention to identify best practices in both programs for possible adaptation.

The Director of DCHCS and the Assistant Secretary for Health Care Policy are beginning to visit juvenile facilities to see the health programs and will be meeting with the Director of the DJJ Health Care System to discuss coordinated activities.

Regarding coordination of the purchase of drugs, the Department of General Services (DGS) is responsible for negotiating prices and procuring pharmaceuticals for the entire Department of Corrections and Rehabilitation. This process includes the Departments of Mental Health, Developmental Services, Veterans Affairs, and the California State University system, as part of the Common Drug Formulary Committee. DJJ is a member of this committee and provides information and data to DGS to evaluate vendor contract specifications.

We have recently begun working with the Contracts unit to streamline the bidding of "master contracts" for registry services, dovetailing the format used for the past several years by adult health care operations. We will be working with Dr. Farber-Szekrenyi and his staff in the near future to streamline the bidding for medical service contracts (hospitals and specialists) to include Juvenile Health Care needs, which may be able to generate a cost savings for contract rates.

As part of the Medical Remedial Plan in *Farrell*, we were required to develop a number of policies to direct the provision of health care in the Juvenile institutions. We have invited Mr. Keller, the Assistant Secretary for Health Care Policy, to participate in the extensive review processing of vetting the policies prior to implantation.

While there may be differences in the level of expertise required by the clinicians who provide services to adults and to juveniles, we will be looking at how we can share mechanisms for peer review and other common areas of interest.

23. How are wards assessed for learning disabilities and is this process changing in any way?

Our process of assessing learning disabilities is established in federal and state law. This process (of assessing) is not changing but the identification process (of student needs) will be enhanced. Each clinic will have a person assigned to interview every incoming student as well as review their education file to determine student or special education need.

A student will be reviewed and assessed for learning disabilities if he/she has a history of special education, is self-referred or is referred by staff or family. Once a student has been identified of need, an assessment plan will be developed and must be signed by the adult student or a parent if the student is a minor. Within 50 days of receipt of the assessment plan, appropriate education professionals (i.e., school psychologist, speech, language and hearing specialist, academic specialist, etc.) will assess and make recommendations to an organized education planning team.

Mental Health

24. How many wards in your custody have mental health diagnoses? What changes are underway in DJJ's current treatment program for mentally ill offenders both within the institution and during parole? Is treatment available to all those eligible?

Based on all Special Program Assessment Needs (SPAN) completed on youth in DJJ facilities in April 2006, 947 have been diagnosed with a mental disorder. These diagnoses range from major mental disorders (e.g., schizophrenia, bipolar disorder, major depression) to attention deficit disorders and behavioral disorders. Many of these youth were deemed to be stable enough to not require specialized/intensive mental health treatment (i.e. stable enough to reside in "general population living" units).

There are 198 youth with sexual behavior disorders currently placed in DJJ residential sexual behavior treatment programs. There are additional youth that have legal mandates to participate in such treatment based upon their commitment offenses.

There are an additional 279 DJJ youth in specialized substance abuse treatment programs. These youth have been diagnosed with at least one substance use/abuse/dependence disorder.

A panel of national mental health experts recently reviewed the Mental Health Remedial Plan. The final version of this plan will be submitted to the court by June 30, 2006. This is a comprehensive plan for reform of the mental health services to youth in DJJ. Some of the planned changes are described below:

- The number of hours per week of treatment that each mental health program participant receives will be significantly increased.
- Reduction of living unit sizes paired with enhancement of staffing will support the above.
- All classifications of staff will be trained in an integrated treatment model that will enhance treatment to youth by enabling all staff to provide treatment. This evidence-based model will lead to a standard approach and language throughout all DJJ facilities.
- Parole staff will be trained in an integrated treatment model providing a continuum of care.
- Re-entry Specialists will be involved in treatment and transition planning from the point of entry through discharge.

Currently, there are waiting lists for treatment beds for this population. There are no waiting lists for acute care programs. The current reform plan includes expansion of treatment beds to ensure that, once reforms are in place, all youth will receive necessary treatment.

25. What sort of mental health cases are best suited for care at DJJ and which are best treated by the Department of Mental Health or county facilities?

DJJ's Health Care Services is currently finalizing screening criteria for determining which youth are not likely to benefit from placement in DJJ. Psychiatric eligibility is evaluated on an individual basis, taking into account the severity of the condition, the youth's physical and mental limitations, the adequacy of our facilities to accommodate the youth, and the likelihood the youth will materially benefit from DJJ's programs.

26. In the past the state has acknowledged that psychiatric histories are incomplete and substandard. How would you describe them today?

The thoroughness of psychiatric histories is still an issue. This problem is being addressed in several ways. The overall shortage of psychiatrists, especially child and adolescent psychiatrists has resulted in staffing shortages in DJJ facilities. DJJ has hired a Board Certified Child Adolescent Psychiatrist as the Chief Psychiatrist. He and the Health Care Administrator have developed an RFP to recruit university faculty psychiatrists and master contracts for Psychiatrists. DJJ has hired a Child Adolescent Psychiatrist as of this summer for the Heman G. Stark Youth Correctional Facility and have begun discussions with the University of California at Irvine to possibly provide an academic psychiatrist.

The Chief Psychiatrist has developed a charting instrument to be installed in Ward Information Network System (WIN) that will be used by all psychiatrists to document the workup and rationale for treatment. This will lead to uniformity of charting and allow easy review by the Quality Management Committee. The addition of a Compliance Coordinator to Headquarters staff will enable the Chief Psychiatrist and Medical Director to evaluate each facility and practitioner's adherence to policy requirements and appropriate mental health care.

The Chief Psychiatrist is also developing specific policies to govern other aspects of mental health care such as follow-up and laboratory testing.

Training of mental health staff on the use of the new WIN document and other new Mental Health Policies is planned as soon as the document screen is installed on the WIN System.

27. What protocol has been created for the delivery of mental health care to those in need in lockdown units? What is the division's policy regarding the placement of wards considered high risk for suicide in lockdown units? How many wards diagnosed with mental health problems are currently in lockdown units?

Mental health youth in a SMP are seen by a mental health clinician at least once weekly.

Any youth in a SMP for more than 60 days is evaluated by a psychologist and an educational representative. The results of these evaluations are reviewed by a Departmental Review Board (DRB). The DRB reviews such cases monthly.

Before a youth considered high risk for suicide can be placed in a SMP unit, the Youth Authority Administrative Committee (YAAC) must approve said placement. The YAAC membership includes a mental health clinician. The role of the clinician is to assess and advise regarding the likelihood that SMP placement will result in an increased risk of suicide or mental decompensation. If so, the youth should be placed in a living unit other than SMP.

As of June 7, 2006, there are 41 youth with a diagnosed mental disorder currently assigned to a SMP in DJJ. This represents 30 percent of the current SMP census (136 youth). However, not all youth diagnosed with a mental disorder are considered to be in need of intensive mental treatment (e.g. placement in an Intensive Treatment Program, Specialized Counseling Program or Special Behavior Treatment Program). In fact, only four of the 41 youth (or 3% of the total SMP population) with an identified mental disorder, currently on an SMP, were deemed to be in need of intensive mental health treatment at the time of the psychological evaluation (the most recent of which was July 1, 2005). By policy, youth on SMP with a need for such intensive mental health treatment receive enhanced mental health services on the unit.

The remaining 37 of the youth on SMP identified with a mental disorder were deemed appropriate for "general population" at the time of the psychological evaluation. For example, the condition diagnosed in 23 of these 37 youth was Attention-Deficit Disorder (ADD) or Attention-Deficit Hyperactivity Disorder (ADHD), which does not require intensive mental health treatment.

28. How will units housing your most difficult mental health cases be staffed?

Staffing for Intensive Treatment Programs (current ITP/SCP)
(Living Unit Size = 30 Youth)

Classification		Positions
Mental Health Program Administrator		1 per facility with intensive treatment programs
Supervising Casework Specialist I		1
Senior Youth Correctional Counselor		1
Office Technician		1
Psychiatrist		.5 per intensive treatment program living unit
Senior Psychologist, Supervisor		.5 per intensive treatment program living unit
Casework Specialist (staggered shifts)		2
Clinical Psychologist (staggered shifts)		2
Licensed Psychiatric Technician	2nd watch	1
	3rd watch	1
Registered Nurse	2nd watch	1
	3rd watch	1
Youth Correctional Counselor	2nd watch	3
	3rd watch	4
Youth Correctional Officer	1st watch	1
	2nd watch	1
	3rd watch	1

For Intensive Behavior Treatment Program units (currently Specialized Behavior Treatment Unit at Preston), the staffing is the same as the above with the exception of psychiatrists and senior psychologists; IBTPs will be staffed at 1.0 of each (rather than 0.5 for the other Intensive MH programs) and the living unit is 25 rather than 30.

29. What is your assessment of the division's existing treatment program for sex offenders both within the institution and during parole? Should the program be strengthened? If so, how?

DJJ has identified deficits in sex offender treatment as indicated in the *Farrell* lawsuit. According to the terms of the Consent Decree, the State has developed remedial plans to correct those deficits. Experts were hired to review and assist in this process. The Residential Sexual Behavior Treatment Programs have been following the existing treatment curriculum during the past three years as a means of standardization.

Experts agree the foundation and therapeutic concept of the treatment curriculum is a sound tool to build upon. DJJ is currently working on enhancements to this curriculum and standardization according to best practices as recommended by the experts.

The treatment providers in existing programs are knowledgeable, professional, and motivated to provide the intense treatment necessary. However, on-going training in the area of new assessment tools and treatment dynamics need to be strengthened. Plans to complement the training needs of these program staff and enhancing services to youth are also in progress. Part of enhancing/strengthening treatment services will include reducing the youth to staff ratio and providing treatment to all identified DJJ sex offenders by developing an Outpatient Sexual Behavior Treatment component at all DJJ facilities. The hiring of staff to fill these positions in the out-patient program is in progress.

Services for sex offender parolees are coordinated by our Juvenile Parole's Sex Offender Specialists who carry caseloads of up to 30. These Specialists receive training annually, network with law enforcement sex offender task groups, monitor mandated registration, provide intensive supervision of the parolee and visit and communicate with the Juvenile institution prior to release of the sex offender.

The Specialist connects the parolee to programs and resources, including employment in restrictive areas where there are no children or opportunity to be tempted to re-offend. Currently DJJ Parole spends approximately $700,000 to provide contracted counseling and transitional beds for sex offender parolees.

However, the need for a strong continuum from institution to parole, along with a higher-profile offenders being placed in the local communities, only serves to further highlight the need to strengthen these aftercare services.

Even though parole services are not considered a part of the *Farrell* lawsuit, we have made a concerted effort to incorporate re-entry and transitional services throughout our planning effort. We will continue to work on strengthening this model over the next year.

30. Please describe the rules and regulations for family visits and phone calls. What is the average cost of a call from a DJJ facility in Stockton to relatives in Los Angeles? How many days is visiting available and are any changes contemplated in visiting policy to encourage regular contact between wards and family members?

The Division has developed a standardized visiting policy, which is being vetted through the policy review process. All institutions have regular visiting on Saturdays and Sundays. Youth are divided into two groups (usually by alpha designation—first initial

of last name) with each group having a day for visiting. Currently, institutions limit visitors to those approved by the treatment team but no restrictions are placed on immediate family members. As a general rule, youth have all-day visiting based on family arrival times and each youth may have up to five approved visitors.

Youth may earn additional visiting privileges through the Ward Incentive Program (i.e. special visits, two day visits, etc.). Our current policy encourages regular contact between youth and family members. Institutions have scheduled many special visits based on family need, family counseling sessions, or special privileges.

Youth are guaranteed two phone call opportunities per month and can earn additional telephone privileges through the Ward Incentive Program. Level A youth have unlimited telephone access within security protocols.

The average cost of a collect telephone call from a youth at Preston to Los Angeles is .50 cents per call and five cents per minute. All Public Utilities Commission charges, local taxes, and telephone surcharges are charged to the receiving party.

Violence and Discipline

Wards in California have been housed in isolation in a system known as "Special Management Population" or "23 and 1" for months longer than the isolation policy in any other state. This policy was in place for years, changing to "21 and 3" in the recent past which allowed wards 21 hours of complete isolation and 3 hours outside of a cell. In prior years Senate staff talked with wards who had been in isolation for as long as 192 days.

31. Under what conditions should wards be placed in single-cell isolation and for how long? How many wards are currently in isolation and what is both the average time spent and the specific length of stay in isolation for each ward? How do you monitor this policy at each institution to ensure appropriate enforcement?

Under the Safety's Welfare Remedial Plan, we have committed to eliminating the current SMPs and replace them with Behavior Treatment Programs (BTP's). Our current implementation strategy anticipates seven BTPs will be implemented in fiscal year 2006/2007 leaving two SMP's to be reformed in Fiscal Year 2007/08. Significantly different from SMPs, BTP's will offer a full day of programming to include education and treatment. In order to achieve a full day of programming and education with this potentially violent population, BTP's will house no more than 24 youth and will be staffed with an enriched complement of YCC's, Casework Specialists, Psychologists, and Teachers. In the meantime, the following describes the conditions under which a youth's program can be modified. (Note: A youth cannot be placed in isolation.)

Restricted Program

A youth may be placed on restricted program if he/she meets one of the following 3 criteria:

- *Administrative Lockdown*- Program restriction to groups of youth due to operational emergency. This can continue until the emergency no longer exists.
- *Temporary Detention (TD)*- A status of confinement for a youth that meets one of four criteria. (Danger to Others, Endangered, Danger to Self and Likely to Escape.) They remain on this status until they no longer meet one the criteria for placement on TD. (Note: We are currently working with the plaintiffs and court experts to modify the TD policy in several ways, including the removal of danger to self and endangered as criteria for placement on temporary detention. It should also be noted that we plan to eliminate temporary detention units as we phase in the Safety and Remedial Plan.)
- *Special Management Program*- Youth can only be assigned to SMP by the Youth Authority Administrative Committee (YAAC) process which includes the Superintendent and representatives from education and mental health. Placement is based on behavioral criteria. Extensions beyond 90 days are

reviewed and approved by the Director. (Note: As indicated above, the SMPs will also be eliminated as we phase in the Safety and Welfare Remedial Plan).

Under current policy, a youth may be placed in their rooms for "time out" but must be seen every 15 minutes by staff and "time out" may not exceed one hour.

Youth Currently In Restricted Program:

Restricted Program Numbers for:		6/2/2006								
	NAC	HGS	PYCF	OHC	DWN	PASO	VYCF	SYCRCC	TOTAL	
Total TD's	5	20	27	2	7	36	4	10	111	
Total Admin. Restriction	0	0	0	0	0	0	0	0	0	Tot. pop.
Total SMP	28	45	37	0	0	17	0	0	127	2936
Total Serving DDMS	0	0	0	0	0	0	0	0	0	238
Total Special Ed	4	8	10	0	0	1	1	0	24	8%
Total Numbers	33	65	64	2	7	53	4	10	238	

Average Length Of Stay:

Average LOS of TD's by Quarter										
										Yearly
Quarters	**NAC**	**HGS**	**PYCF**	**OHC**	**DWN**	**PASO**	**VYCF**	**SYCRCC**	**Average**	**Average**
1/1/06- 3/31/06	4	3	4	0.5	4	2	2	2	**3**	
10/1/05 - 12/31/05	3	3	5	2	3	2	2	2	**3**	**2005**
7/1/05 - 9/30/05	5	3	5	2	2	1	2	3	**3**	**3**

SMP AVERAGE LENGTH OF STAY:

7/05 to 9/05 =	61 days
10/05 to 12/05 =	50 days
1/06 to 3/06 =	46 days

32. How are you approaching the problem of gangs, and how will you measure the effectiveness of your strategy? What steps are you taking to prevent the need for wards to join gangs when they arrive at an institution so they can feel safe? What special training does staff receive to handle gang issues?

DJJ acknowledges gang activity and violence remains at unacceptable levels. Approximately 70-75% of youth committed to DJJ have a history of gang involvement. DJJ has requested funds in our budget proposal to contract with a juvenile gang intervention specialist to assist with developing strategies to safely integrate gangs, including development and delivery of evidence based gang interventions, with specific strategies to reduce a youth's perceived need to join a gang. Effectiveness of this program will be measured by an increase in the number of units without gang

segregation, increased numbers of youth participation in interventions, and ultimately a reduction in gang related activity and violence.

Normative Culture will be implemented to assist in changing the culture from youth prisons to rehabilitative juvenile facilities. Recently, DJJ has been reaching out to help address these issues. Specifically, we are contracting with outside resources, such as Project Impact, Breaking Barriers and Correctional Gangs Anonymous.

Conflict Resolution Teams will be established at five facilities in fiscal year 2006/07 to proactively interact with youth and counseling to identify and resolve conflict.

33. How are you addressing increased violence at facilities such as Heman G. Stark in Chino as recently reported by the Inspector General, particularly when violence appears to be racial in nature?

Within the past three months, the management team at Heman G. Stark has created a cross-disciplinary committee to examine the current racial climate and problems of youth-on-youth violence at Stark. Committee membership is comprised of a program administrator and representatives from among treatment team supervisors, senior youth correctional counselors, youth correctional counselors, and clerical classifications. The committee is working as quickly as possible to identify strategies to address these issues at Stark.

One of the first strategies they have begun implementing is to separate some of the more assaultive youth from the non-aggressive youth. Four living units have been designated to enable the separation of these youth—two units for each classification. This is the first step in a classification system which will separate higher risk youth from lower risk youth.

Additionally, in order to bring in assistance from community based organizations, DJJ has recently contracted with Project Impact and Breaking Barriers to begin services at Heman G. Stark.

- Project Impact is a community-based program developed by inmates at San Quentin to address issues related to incarceration. The training and overview for staff was provided March 2006, and the program began implementation at Heman G. Stark last month.
- Breaking Barriers is a cognitive-based program designed and delivered by certified trainers. The overview for Breaking Barriers was provided to staff in May. The program will begin implementation at Heman G. Stark this month.

The facility is also working with the Gang Reduction Intervention Team that is now operating in Riverside and San Bernardino counties in conjunction with probation

departments in those counties. The effort is intended to provide a transitional program for youth paroling to these two counties.

It is also important to note that the facility's management team has implemented the Ward Incentive Program. This program provides positive incentives and rewards to youth who wish to program positively and refrain from violence. Currently, 80% of the youth at Stark are at Level A or B, the highest levels of the incentive program, which means they have refrained from violent acts to earn or maintain this level. This program will continue to be enhanced over the next year as we begin phasing in the Safety and Welfare remedial plan.

34. Please describe briefly your discipline policy and its relationship to the "time adds" that increase the length of stay for many wards. If you are contemplating policy changes, what is your specific timetable?

Under current policy, serious misconduct can result in a "time add" from one to 12 months if other sanctions have been considered and determined to be unsuitable in light of the youthful offender's previous history and circumstances of the misconduct. If a "time add" is considered, the Table of Sanctions is used to determine the number of months that can be given for a specific offense.

Under the Safety and Welfare Remedial Plan, we will increase the ability for youthful offenders to earn back disciplinary time with good behavior. For example, youth will be able to earn back 50% of the time added after six months, instead of having to wait 12 months, if the youth displays good behavior.

In addition, we are continuing to work with the court experts on their suggestions to further reduce time adds including establishing a broader array of graduated sanctions.

Our estimated timeframe to implement these changes is six months. However, we may be able to do this more quickly depending upon labor impact negotiations.

35. How do you communicate with members of the youth side of the Board of Parole Hearings to help them better understand your policies and reform efforts? How should their decisions on "time adds" and parole coordinate with your policies?

It is important to recognize that the BPH is a distinct legal entity and it is essential to recognize their legal authority and responsibilities.

SB 459 substantially changed the authority of these parole hearing members. They do not give time adds, they make parole decisions and hear certain Disciplinary Appeals. Please refer to the answer above regarding our efforts to reform the "time add" policies.

The best way to help the Juvenile Parole Board members to understand the DJJ policies and reform efforts is through joint work efforts. For instance, one of the Consent Decree obligations was to create a Ward Incentive Program. DJJ staff worked with the BPH to develop criteria for youth to receive 15 Day Program Credits per month. This was a substantiated increase over the previous 9 Day Program Credit option. Currently, 221 youth are earning 15 Day Program Credits and every youth who appeared before the BPH that was earning 15 Day Program Credits has been paroled. This is an excellent example of the type of cooperative relationship between DJJ and Juvenile Board members that I will continue to foster.

Outcomes

36. What measurements will you be using to assess the progress of DJJ in meeting the goals you have described? How should the Legislature evaluate your progress? What specific yardsticks should we use?

DJJ has committed to implementing Performance-based Standards (PbS), a nationally recognized performance management system.

PbS includes 105 outcome measures for correctional facilities that indicate performance toward meeting 30 standards derived from seven goals. The seven goal areas include the following components of facility operations: safety, security, order, programming (including education), health/mental health, justice and reintegration.

For example, the PbS standards identify three goals against which critical safety outcomes are measured:

- To engage in management practices that promote the safety and well-being of staff and youth and protect staff and youth from intentional and accidental injuries;
- To minimize environmental risks and reduce harm in the use of restraints and isolation; and
- To protect staff and youth from fear.

As part of the contract with PbS, they will provide California with the necessary technical assistance to get the system up and running. Once the data collection system is fully operational, DJJ will be able to compare itself with the other jurisdictions that have implemented PbS, enabling California not only to monitor its own progress but to measure itself against national standards. Dedicated staff will be provided training on how to collect the data, how to analyze the data, and how to develop and implement plans to ensure improvement.

The PbS process includes data collection, site reporting and analysis and facility improvement plans. DJJ has received federal funds to enable us to contract with PbS before the end of the current fiscal year. The Governor's Proposed Budget includes the positions necessary to ensure accountability and quality assurance. Specifically, the proposed budget includes: 11 positions for PbS to ensure effective implementation at each site and statewide oversight and 18 positions for Quality Assurance/Training. DJJ plans to collect baseline data in October 2006.

In addition to PbS, which reports data twice a year, DJJ has agreed as part of the budget discussions in Senate Budget Subcommittee 4, to provide the Legislature with performance measures and outcomes over the course of the next fiscal year. We will be working with the legislative staff over the next couple of months to identify appropriate measures to track DJJ's implementation, including both process (are we

doing what we said we would do?) and outcome (are the changes having the intended impact?) measures.

Paula A. Daniels

May 30, 2006

Ms. Nettie Sabelhaus
Appointments Director
Senate Rules Committee
State Capitol
Room 420
Sacramento, CA 95814

Re: Statement of Goals

Dear Ms. Sabelhaus:

This letter is submitted as my statement of goals for the Bay-Delta Authority, per the request of the Senate Rules Committee.

LONG TERM GOALS

The collaborative and facilitative structure of the Bay-Delta Authority is its main contribution to water policy in this state. Some long term goals which would help maintain the relevance of the Authority:

- Increased federal funding
- Creation of a dedicated state funding stream for the CalFed programs, the Independent Science Board, and the Authority
- An increased level of support and guidance for regional planning on water projects that promote regional self sufficiency and reduce dependence on water from the Delta
- Continued and better coordination, oversight and accountability on water planning
- Continued and better transparency in decision making on key water policy issues

SHORT TERM GOALS

An immediate goal is to preserve the key elements of public participation, oversight, and transparency that are the foundational hallmark of this agency. Toward that end, it is important that the Authority continue to have sufficient funding and staffing to support its activities and that the Authority to continue to have input and decisional guidance over the following:

- Development and implementation of a credible, durable process to address environmental justice issues in CalFed water policy
- The Delta vision process and strategic planning
- Creation of robust and substantive communication links for meaningful oversight of the CalFed projects
- Program and spending priorities

The Authority should also be given sufficient funding to implement a statewide public education program about the environmental issues of the Delta, to create support for CalFed programs and for future bond measures.

Thank you for considering this statement.

Sincerely,

Paula A. Daniels

Alfred G. Montna
California Bay-Delta Authority
Goals

As an appointed member of the Bay-Delta Authority for the past three years, it has been our primary charge to carry out the Bay-Delta Authority Act passed by the Legislature and signed by the Governor in 2002.

Since that time, we have been through a lot of process with very little progress. Granted, we now have a better understanding of the Bay-Delta ecosystem, we have learned from the mistakes as the CALFED Program has been roundly criticized by all quarters of the State and we have seen the Legislature and the Governor signal a new direction through legislation (AB 1200).

With this important transition underway, my short and long-term goal as a member of the Authority is to continue to both urge and help the Administration and the Legislature to make progress in crafting and then implementing the necessary solutions for the Bay-Delta system. With the pelagic fish problems and a more visible risk of levee failures in the Delta, we must move forward in a deliberate and transparent manner that relies upon the best available science and encourages collaboration by various parties throughout the State. Now is the time for the State and Federal agencies, working with the Authority and the Legislature, to develop a long-term sustainable solution that will improve the important Bay-Delta ecosystem, will help assure reliable water supplies from the Delta and will make sure that we do not redirect impacts to other parts of the State. Most importantly, it will be my goal to keep the process focused on the necessary Bay-Delta solutions and avoid past mistakes to broaden the program by trying to solve every water problem in the State.

JN - 5 2006

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NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

June 7, 2006

John A. Andreini

Dear Mr. Andreini:

As you know, the Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the California Horse Racing Board on Wednesday, June 28, 2006. You are not required to appear.

We would like to receive an updated Form 700, Statement of Economic Interest, by June 21st. A copy of the statement you submitted to us earlier is enclosed so that you may review it for any changes that have occurred. If there are no changes to the statement, simply let us know.

Following are questions we would like you to respond to in writing so that members of the Rules Committee may be better informed about your work on the board. Please have this information in our office by June 21st. If you prefer, you can fax your responses to us at (916) 445-0596.

Questions

1. *Please provide a brief statement of your goals. What do you hope to accomplish during your term on the Horse Racing Board?*

Last year the board formed an ad hoc committee of racing executives, marketing executives, fans, and others to analyze the way the horse racing industry promotes itself. The committee has been described as the "Bring Back the Fans Committee" because the primary purpose is to increase attendance at live racetracks.

2. *How do you assess the future of horse racing in California? Is its financial future dependent on its ability to compete with gaming competitors?*

JUN 20

3. *What steps would you recommend to increase attendance at race tracks? What role should marketing play in the effort to increase attendance and revenues?*

A recent report on the Jockey's Guild, by the guild's new management headquartered in Monrovia, cites inappropriate use of $2.1 million to pay operating costs, hundreds of jockeys riding without catastrophic accident insurance because the guild management let the policy lapse, and two former guild leaders allegedly wrote themselves checks totaling $217,000 the day they were let go.

4. *What is the role of the California Horse Racing Board with respect to the Jockeys' Guild? How is the board addressing this issue?*

Last year the board addressed health issues of jockeys and the weight horses are required to carry. The chair of the board said, "We need to find out what is in the best interest of jockeys, and to do that we need a study. In the interim, we need to eliminate any unsafe health practices at the racetracks – beginning today!"

5. *Since those comments have been made, what has the board done regarding jockey health issues, in particular, weight requirements? Has the issue of jockeys' health improved?*

6. *What are your thoughts on the weight requirements for jockeys?*

Your board has decided to require horse racing tracks with meets of longer than four weeks to install Polytrack, a synthetic material, on their horse racing tracks for safety reasons.

7. *What is the estimated benefits to horse and rider safety of installing Polytrack?*

8. *How will the upgrade in these tracks be financed?*

The Advanced Deposit Wagering system is due to expire in December 2007. This wagering system allows wagering by phone or computer from a person's home or office. Currently the gaming industry has some internal disagreements regarding this system.

9. *What are the areas of disagreement in the gaming industry over the Advanced Deposit Wagering system as they affect the horse racing industry?*

10. *What would happen to the horse racing industry if this system expires at the end of next year?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

Don Perata

DON PERATA

DP:KW:dc

JOHN ANDREINI

VIA FACSIMILE # 916-445-0596 & U.S. MAIL

June 16, 2006

Ms. Nettie Sabelhaus
Rules Committee Appointments Director
Room 420, State Capitol
Sacramento, CA 95814

Dear Nettie:

As you know, I am a very new member on the California Horse Racing Board. There are so many issues that seem to come to the forefront as each month passes.

Because I am not totally up to speed on what's happened in the past three to five years, it's difficult to catch up. I know I will be more in step with what's happened in the past and with that knowledge, I will be a much more knowledgeable and effective Board Member.

I will attempt to answer Questions 1 to 10 to the best of my ability.

1. I will consider it a great accomplishment if I can advance horse racing to another level during my term. There are so many factors that are keeping harmony from occurring and I hope that as time passes, I can have a hand in getting a lot of well-intentioned people on the same page.

2. Frankly, I believe that horse racing in California has a bright future. However, there are a number of things that have to be accomplished before we can get back to the "good old days". New track surfaces, larger purses, harmony between CHRB and the likes of the TOC and the CTBL along with the CTT will do wonders toward advancing our sport. Secondly, it certainly is a shame that slot machines are not allowed on California racetracks. Frankly, that's where they belong. If the Indian nations can do what they want to do, it seems only just that our racetracks in this state have the ability to compete on the same level.

220 WEST TWENTIETH AVENUE, SAN MATEO, CALIFORNIA 94403, (650) 573-1111

JUN 19

Received 06-19-2006 11:11am From-650 378 4282 To-SENATE RULES COMMITE Page 001

3. If the tracks will institute some giveaway gimmicks and increase their marketing budgets or at least spend their money for marketing more wisely, we have no doubt that attendance and revenue will increase. With the advent of a new track surface, more horses will come back to California. We would have full fields and when that occurs, it gives the bettors more incentive to wager.

4. I am not very well versed on this subject. However, I don't feel that the CHRB is in direct connection with the Jockeys' Guild. I think the board can put some teeth into the Jockeys' Guild by helping them get donations and or pledges from people in the industry that will restore their bank account and thereby enable them to buy the product that is needed.

5. I don't really know if any thing earthshaking has been done to jockeys' health issues and in addition, I cannot answer the question about jockeys' health improving. There has been some talk about increasing weight requirements and I can concur with what has been going on up to this date.

6. I don't think it's a bad idea for weights to be increased slightly. I think that the fasting reducing coupled with alcohol consumption makes it very difficult for jockeys to maintain their weight. Adding to the jockeys' allowable weight might make them healthier in the long run.

7. To be in a horse business takes a large monetary commitment. Without being able to do it, no one wants to be in the horse business. To go buy a yearling for anywhere between $25,000.00 to $1,000,000.00 plus and possibly have the horse break down because of bad footing on the track, the new "Polytrack" would hopefully stop these injuries and when that happens, the owners from out-of-state will be more willing to run their horses here in California.

8. As all these tracks are privately financed, it's hard for me to tell where these people and corporations are going to get their money. I am sure they will find it some place.

9. I certainly know that there are areas of disagreement in our industry over ADW. I don't believe CHRB has the ability to dictate to these people in any way. Horse racing was thriving before the advent of ADW. I certainly don't think there is an adverse effect, I assume, if ADW disappears in December 2007.

10. Please see my answer in No. 9 above.

Once again, I want to reiterate that I am very passionate about my position in the California Horse Racing Board and I am going to do every thing in my power to make horse racing a better venue going forward.

Also enclosed is an updated Form 700, Statement of Economic Interests as of February 9, 2006 for your records.

Sincerely,

John Andreini

JA/gw

June 19, 2006

Hon. Don Perata
Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento, Ca 95814-4900

Attention: Nettie Sabelhaus

Dear Senator Perata,

Thank you for the opportunity to respond to questions related to the confirmation of my appointment as a member of the California Horse Racing Board.

First, there are no changes to the Form 700, Statement of Economic Interest, dated March 15, 2006, which was previously submitted to the Committee. To facilitate responses to the Committee, I have taken the liberty of copying your questions within the content of this letter, each of which is followed by my response.

1. *Please provide a brief statement of your goals. What do you hope to accomplish during your term on the Horse Racing Board?*

In recent times, the CHRB has been able to bring the industry together to face some of the challenges affecting the future of California's horse racing industry. This is a role we can continue to play, which, I believe, will inure to the benefit of all participants. There are two specific areas in which I believe we can do more: 1) Ensuring the safety of the athletes – both human and equine; and, maintaining the integrity of racing through the most highly sophisticated drug-testing program in the country. Both are key roles for commissioners as far as I am concerned.

Horse racing is a highly regulated industry in our state. It is also an industry which has been on the decline in recent years. It is often extremely difficult to reach consensus among industry participants and many times the role of a commissioner turns into that of a referee or mediator. I believe it is the duty of a commissioner to ensure a level playing field exists for all participants: the horses, trainers, jockeys, owners, fans and the associations.

Last year the board formed an ad hoc committee of racing executives, marketing executives, fans, and others to analyze the way the horse racing industry promotes itself. The committee has been described as the "Bring Back the Fans Committee" because the primary purpose is to increase attendance at live racetracks.

JUN 20 2006

2. *How do you assess the future of horse racing in California? Is its financial future dependent on its ability to compete with gaming competitors?*

Frankly, I think the future of horse racing in California will continue on a downhill path until the industry joins together for the benefit of all to promote itself. Currently, the industry is made up of natural competitors who rarely come together to promote the benefit of the whole and only do so when under extreme pressure. I think this needs to be changed for the industry to grow. Horse racing should join the likes of other sports programs in the country that have national associations (e.g., NBA, NFL, etc.). The existence of the NTRA does not provide the same structure nor benefits to individual state's racing associations.

Of course its financial future depends on its ability to compete, but not just with other gaming interests. it must be able to compete with other entertainment interests as well. The fan base, for the most part is growing old, and there does not appear to be enough of a creative and effective marketing program to make horse racing appeal to the younger generations, with the exception of special days such as the Kentucky Derby or the opening of Del Mar.

3. *What steps would you recommend to increase attendance at race tracks? What role should marketing play in the effort to increase attendance and revenues?*

Marketing can play a huge role to increase attendance and revenues. At the recent Santa Anita meet, attendance was up markedly. I believe it was the direct result of an increased and targeted marketing effort created and employed by that association. Communicating to the public that a day at the race track can be great entertainment is important. I have been told by people who rarely go to the races, they believe it's a boring and tedious thing to do. Does this refer to the lack of fast-paced entertainment in between races, the fact the associations charge for parking and a program before you've even ventured inside the track, or is it that handicapping seems like a formidable challenge? Those are the kinds of questions that should be addressed by the associations. The CHRB can not micromanage the business at the tracks, but we can encourage common sense and request that greater creativity and resources be put into marketing.

A recent report on the Jockey's Guild, by the guild's new management headquartered in Monrovia, cites inappropriate use of $2.1 million to pay operating costs, hundreds of jockeys riding without catastrophic accident insurance because the guild management let the policy lapse, and two former guild leaders allegedly wrote themselves checks totaling $217,000 the day they were let go.

4. *What is the role of the California Horse Racing Board with respect to the Jockeys' Guild? How is the board addressing this issue?*

As soon as these issues came to light, the CHRB took action by requesting an audit of the guild, met with the jockey's leaders, and offered to find assistance for the jockeys' welfare fund in the interim while they were restructuring.

Last year the board addressed health issues of jockeys and the weight horses are required to carry. The chair of the board said, "We need to find out what is in the best interest of jockeys, and to do that we need a study. In the interim, we need to eliminate any unsafe health practices at the racetracks – beginning today!"

5. *Since those comments have been made, what has the board done regarding jockey health issues, in particular, weight requirements? Has the issue of jockeys' health improved?*

The CHRB has held a number of hearings on this exact issue. Some in the industry dare to say if jockeys are allowed to carry extra weight it will hurt the horses, ignoring the fact that the health of the jockeys is at stake. During these discussions, it became apparent there are many who believe this is one of the issues for which there needs to be a national ruling so California does not inadvertently hurt the ability of its jockeys to compete in other states. The CHRB voted to endorse a scale of weights to be developed nationally by the racing associations, horsemen and most important with the jockeys. The issue will be looked at from a scientific basis because we understand that body composition, body weight, and body fat are each different factors for which we need to use objective standards. The Board has also supported legislation that would set parameters for a peer-review study about jockey health issues so informed policy decisions can be made. The Jockeys' Guild has supported the actions of the Board as a step in the right direction.

6. *What are your thoughts on the weight requirements for jockeys?*

I am completely for increasing the weight of jockeys in California. The weight requirements for jockeys, established a very long time ago, are absurd given the physiology of Americans today. The reports we have heard from doctors, jockeys and others lead me to believe it is in the best interest of the jockeys to allow an increase in their weight. This issue is further complicated, however, by the posting of weights and what is actually calculated in that posting. The CHRB has taken aggressive steps to ensure accurate weight totals and an explanation of what those numbers really mean, are posted for fans.

Your board has decided to require horse racing tracks with meets of longer than four weeks to install Polytrack, a synthetic material, on their horse racing tracks for safety reasons.

7. *What is the estimated benefit to horse and rider safety of installing Polytrack?*

The CHRB has heard several reports and conducted demonstrations about the use of synthetic surfaces at California tracks. While it is true the number of tracks that currently use synthetic surfaces are few, the results displayed at those tracks are absolutely amazing. The number of horses that breakdown each year in California is in the hundreds. Estimates on the value of those horses are in the multi-millions of dollars. Synthetic surfaces have been shown to save horses and in turn, jockeys. For example, at Turfway Park in Kentucky, at its winter-spring meet, three horses suffered catastrophic breakdowns on the artificial surface compared to 24 breakdowns during the previous meet. I believe it is costly, but worth the price if we can save both humans and horses. Moreover, if horses breakdown less, there will be greater field sizes, which will contribute to an increase in wagering, which will allow the California horse racing industry to better compete with other states.

8. How will the upgrade in these tracks be financed?

There are a number of possibilities currently being reviewed. Included would be the direct expenditure by the tracks themselves, the possible use of some of the dollars from the California Marketing Committee Fund, or funds that could result from the passage of SB 1805 (Florez), which would allow the use of excess funds, currently directed toward racing associations to defray the cost of workers compensation, for use in safety improvements at the tracks.

The Advanced Deposit Wagering system is due to expire in December 2007. This wagering system allows wagering by phone or computer from a person's home or office. Currently the gaming industry has some internal disagreements regarding this system.

9. What are the areas of disagreement in the gaming industry over the Advanced Deposit Wagering system as they affect the horse racing industry?

Unfortunately, there are a number of areas of disagreement regarding Advanced Deposit Wagering. When the law was passed to allow ADW, it appeared all members of the horse racing industry supported the bill as a way to obtain new revenues for the industry and as a means to compete with other gaming interests and other states with gaming. In the interim, ADW has garnered opponents including those who believe the use of Internet gaming has "cannibalized" the industry by leaving horse racing fans at home with their computers instead of bringing them to the tracks. Labor unions also question the ADW licenses because very few jobs were created upon its passage.

There is no question that wagering is up because of ADW. Controversy exists, however, because of the question of exclusivity between the ADW companies and the racing associations. There is, and will continue to be, intense debate between those who believe content and fees should be shared in a way that does not currently exist. Moreover, the State of California and the Fairs and Exposition Fund do not receive any license fees

FRANK KAPLAN STATEMENT REGARDING LAW REVISION COMMISSION

Having served on the Commission for several years, I have come to appreciate the important role the Commission plays in assisting the legislative process. My short term goal for the Commission is to efficiently complete a number of lengthy projects that have significant public interest and present the Legislature with reasonable recommendations for proposed legislation. These projects include common interest developments, mechanics liens, and beneficiary deeds. My long term goal is to increase the Commission's resources so that the Commission can adequately serve the needs of the Legislature. The current staff is extraordinarily able, but the Commission would benefit by gradually increasing the number of staff lawyers, thereby enabling the Commission to more effectively handle the large number of projects to which it has been assigned.

MAY 24 2006

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STATEMENT OF SHORT AND LONG TERM GOALS
FOR THE CALIFORNIA LAW REVISION COMMISSION

I am in my fifth year as a Commissioner on the California Law Revision Commission. I was originally appointed to the Commission in March of 2002 by then Governor Davis. I was reappointed by Governor Schwarzenegger last November. Currently, I am Chair of the Commission.

In terms of short term goals, the Commission has several studies on its agenda which are nearing completion, and it is my intent to move those along to prompt completion and recommendation to the Legislature. Some of these studies are relatively routine, though tedious, such as a determination of statutes made obsolete by the restructuring of the trial courts and our efforts to improve the civil discovery statutes. Others are more substantive in nature.

For the long term, I think it is important that the Commission complete its work on the revision of the mechanic's lien statutes, and that it work with the Legislature on the currently pending bills, based on Commission recommendations for creation of a new agency and "ombudsman" dealing with problems in common interest developments. The latter issues have been before the Commission ever since I first became a member, and as the number of common interest developments in California continues to proliferate, the problems of board-member disputes are of a continuing and increasing nature. Evidence presented to the commission over the last 4½ years fully supports the need for a State agency to provide greater educational and mediation services, to ameliorate the sometimes unsatisfactory relationships between the boards of common interest developments and their resident members and occasionally, disputes between members.

In addition to the foregoing, I would like to see the Commission deal with some problem areas in the related areas of eminent domain and inverse condemnation. On a more general level, I am hopeful that the Commission can continue to produce efficient studies and sound recommendations to the Legislature.

Very truly yours,

Edmund L. Regalia

Edmund L. Regalia

ELR:sh

25

STATEMENT OF WILLIAM E. WEINBERGER IN SUPPORT OF APPOINTMENT TO CALIFORNIA LAW REVISION COMMISSION

To the Members and Chairman of the Senate Rules Committee:

In response to the request in the May 15, 2006 letter from the Honorable Don Perata, Chairman of the Senate Rules Committee, I am providing the following statement of my short- and long-term goals for the California Law Revision Commission (the "Commission"). Both the short-term and long-term goals focus on what the Commission does best – in-depth studies, analysis and proposals to improve the statutes of the State of California.

Short-Term Goals

The Commission currently has eighteen active projects pending in eleven different substantive areas within its jurisdiction as authorized by the Legislature. One of my short-term goals is to help the Commission prioritize its calendar and its limited resources to continue to deliver meaningful and useful proposals, based upon the Legislature's assignments to the Commission, the perceived need for the projects on which we are working, and the length of time that projects have been pending.

Two areas on which the Commission has been working for some time now, which appear to be addressing the need to clarify, organize and, in some instances, modify the law, are the mechanic's lien law and common interest development law. Both topics involve statutes that have been amended numerous times over the years, resulting in provisions that can be difficult to use and contain traps for the unwary. Both areas of the law are also often used and applied by non-lawyers on issues that can have a major impact on the every-day lives of people. And both topics involve legal issues that require a delicate balancing of at times conflicting interests, from which consensus, if possible, must be derived if any recommended changes have an opportunity to pass through the Legislature.

In the short term, I hope to help the Commission focus on those areas in which it can prove most useful to the Legislature and the State of California, by building consensus for recommendations to improve and streamline statutes. The two areas mentioned above are just two of the topics in the short-term on which the Commission can be most effective.

Long-Term Goals

I would like to help secure the ongoing health, support and vitality of the Commission, which has made significant contributions to the California Codes since it was established in 1953. The Commission has an incredibly dedicated and talented staff, who produce a very high quality of work, which is critical to the Commission's effectiveness. At times, during my first term as a Commissioner, there were proposals during the budget process to eliminate or hamstring the Commission. Those proposals

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would have saved only a paltry sum in the annual budget, but would have resulted in a significant loss of resources to the Legislature for in-depth and long-term analysis of legal improvements that the Legislature cannot always focus upon. I was heartened by the support that the Commission received from the Legislature during those difficult times. I would like to try to assure that the value of the Commission continues to be acknowledged, as long as the Commission continues to produce the high-quality recommendations that have earned the Commission its reputation for even-handedness, integrity and thoughtfulness.

The Commission should continue to focus on technical improvements to the law and, where, consensus can be achieved, on substantive improvements. The Commission currently has 22 topics on its calendar, as authorized by the Legislature. My long-term goal would be to assure that the Commission continues to produce the volume of work it usually achieves with minimal staff and, if possible, to augment the staff to improve the Commission's output.

Where the Commission is tasked to develop recommendations in substantive areas in which groups with different agendas are interested, the Commission should continue to try, where possible, to achieve consensus on the best possible balanced approach to improving the law. Particularly in light of its limited budget, the Commission should avoid topics in which consensus is unlikely, or in which any recommendation will simply lead to a further battle in the Legislature. The Commission works best, and provides the best service, when its reasoned recommendations are sent to the Legislature with a built-in consensus. Obviously, the Legislature will perform its due diligence on whatever proposals it considers, but the Commission should continue to make recommendations on which the Legislature knows it can rely.

I would be willing to answer any questions concerning particular projects on the Commission's agenda. I am also willing to expand on my short-term and long-term goals for the Commission, if the Committee so desires.

Thank you for your consideration of my nomination for the Commission.

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HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 9, 2006

1:30 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

BILL BAILEY, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

SELVI STANISLAUS, Executive Officer
Franchise Tax Board

ASSEMBLY MEMBER ALBERTO TORRICO
Asian-Pacific Islander Joint Legislative Caucus

BETTY YEE, Board Member
Board of Equalization

ASSEMBLY MEMBER SALLY LIEBER

CHRIS MICHELLI

MARGO R. BROWN, Member
California Integrated Waste Management Board

MARC APREA
Republic Services, Inc.

YVONNE HUNTER
League of California Cities

KATHERINE BRANDENBURG
Institute of Scrap Recycling Industries

CHUCK HELGET
Allied Waste Industries and BFI

JOSH PANE
California Refuse Removal Council

MAUREEN F. GORSEN, Director
Department of Toxic Substances Control

STEVE BAKER
California Association of Professional Scientists
Professional Engineers in California Government

BOB HOFFMAN
Zeneca Project

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We now have the appointee as Executive Officer of the Franchise Tax Board, Selvi Stanislaus.

Welcome.

Assembly Member, welcome to you.

ASSEMBLY MEMBER TORRICO: Thank you, Senator, Members of the Committee. Good afternoon.

Thank you very much for the opportunity to introduce Ms. Selvi Stanislaus today. I appear this afternoon on behalf of the Asian Pacific Islander Joint Legislative Caucus, which is the bipartson Asian Caucus in the Assembly, in support of Ms. Stanislaus' appointment.

As you may have reviewed from your notes, Ms. Stanislaus has served as the acting Executive Officer over the past seven months and has demonstrated that she has the leadership, vision, and skills needed to effectively lead the FTB. Some of her accomplishments include improving transparency and customer service at the agency, posting important tax and contact information on the web site for the agency.

Ms. Stanislaus has also worked to ensure the needs of non-English speaking taxpayers in under-served communities. She also has an impressive record previous to her tenure at the FTB on the Board of Equalization, where she served as chief policy maker for legal issues related to the 27 taxes and fees administered by the Board.

In short, Mr. Chairman and Members, you have before you an extremely qualified candidate. And I will note

that she will become the first woman Chief Executive Officer, and the first Asian-American to lead the agency.

So, I am honored and proud to introduce her to this Committee for your action this afternoon.

CHAIRMAN PERATA: Thank you, sir.

Betty, is that why you're here? Do you want to come up?

MS. YEE: Yes, it is.

Thank you very much Mr. Chairman and Members. I'm Betty Yee with the State Board of Equalization, representing the First District on the Board.

I'm very pleased to be here to support the confirmation of Ms. Stanislaus. She and I have had a close working relationship while she served on the Board.

And I can say that over my close to two decades of state public service, she really exemplifies what I think is the new leadership that's required in state public service, and that is someone who really cares about innovation in tax administration with really a focus on excellence and quality of service.

And I can say without hesitation that she also is someone who works very collaboratively with any party that comes before her, and she has been recognized for her problem-solving abilities as well as her ability to think and act strategically on administrative and policy matters, and I think is the kind of person that we want to see lead the Franchise Tax Board.

Thank you.

CHAIRMAN PERATA: Thank you.

Sally, you're here for the same? Come up, please.

This is pretty impressive. You don't have to say a word.

[Laughter.]

ASSEMBLY MEMBER LIEBER: I just wanted to urge confirmation today. My name's Sally Lieber, Assembly Member.

I wanted to urge confirmation of Ms. Stanislaus. We put a very heavy emphasis on case work within our office. And we had a case in which we were working with the Franchise Tax Board for about a year. And about six months into that time, Ms. Stanislaus came on board, and it was really a turning point for our situation and for the situation of the taxpayer, who was our constituent.

We found that she is a person who is really dedicated to serving the taxpayers of the state, and I would have to say is the most exemplary individual that we found in dealing with any of the agencies in which we've pursued case work.

So, I would give her my highest recommendation and really urge confirmation today.

CHAIRMAN PERATA: Thank you.

Your turn.

MS. STANISLAUS: Honorable Chairman and Honorable Members, this past January I was humbled and honored to be appointed by the three-member Franchise Tax Board as its fourth Executive Officer.

My ultimate goal is to build a Franchise Tax

Board that is even more responsive and effective to the needs of the Legislature, tax professionals, and more importantly, the California taxpayers. I believe one step forward in this process is through transparency in government, which I define as the ability of ordinary citizens to hold their government officials accountable for their actions.

My husband and I immigrated to the United States because of the opportunities America had to offer. One reason we have such opportunities is that we have a more open government here. The fact that ordinary citizens have access to meetings, can request and receive governmental documents, and have input into governmental decisions is critical to my vision of a transparent FTB. I have already directed staff to make more information available on line. For example, we now post our legal rulings, senior management names and phone numbers, and more information about tax administration on line, which I believe is a step in the right direction.

The FTB already has a well-deserved reputation for using technology to make our jobs easier, and in return, make the taxpayers' job easier. But as we move forward with new technologies, we must do so with an ever vigilant eye on protecting taxpayers' confidential data.

Security is a great concern of mine. Lately it seems you can't pick up a newspaper or turn on a television without hearing about privacy, security, lost or stolen data. I am proud that the FTB follows a defense in depth security strategy, which is basically layers upon layers of security, with adherence to best practices from the government and

private industry.

I will also continue to seek out program efficiencies and improve our customer service. Public trust is vital to the continued success of our voluntary self-assessed tax system, and I will strive to strengthen that trust. For example, Tax News, our publication for tax professionals, is now available on line and updated as issues or changes emerge.

I'm also committed to streamlining our processes and improving work flow to reduce the amount of time it takes to complete audits, protests, and appeals.

I will continue to place a premium on customer service and serving your constituents. When a taxpayer contacts us with their issues or concerns, it is imperative that we get them information they need to make the adjustments and to help them comply with their tax burden.

Although I cannot promise that everyone will like the Tax Board, what I can promise is to reduce the frustration people sometimes feel when they deal with us.

As I stated earlier, increasing the amount and quality of information on our web site plays a big role. Internally, we will continue to provide Legislators and state departments with fast, accurate, and complete information, because the sooner the Legislature has the needed data, the faster you get to introduce your bill or respond to a concern.

In conclusion, let me highlight a few of my accomplishments during my short term as Executive Officer.

I have increased our outreach and educational programs to the minority communities; increased our Speakers

Bureau representations to small businesses and newly formed tax-exempt organizations; completed the most successful filing season in FTB's history.

In the month of April alone, we collected $11.3 billion, a 40 percent increase from 2005. And as of last week, we have issued 9.6 million refunds, totalling $6.9 billion, for an average refund of $724. At the end of the fiscal year, we have collected over $60.4 billion, the highest ever collected in the State of California.

I have begun the process of reviewing and rewriting some of the most common billing and information notices we mail to taxpayers, so that the tax bills will be more easily understood. I've looked at innovative ways to help taxpayers self-audit through pilot programs, and we are currently reviewing our collection practices to make them more responsive.

I'd like to add a thanks to the tremendous staff of the Franchise Tax Board. I have been warmly embraced in my new role. The employees have consistently welcomed me with eagerness, kindness, and enthusiasm for what we can accomplish together.

I'm grateful to have this opportunity to work with an extraordinary organization like the FTB, and I look forward to a future filled with challenges and successes.

Thank you.

CHAIRMAN PERATA: Thank you.

We'd like to give you a number that we need for next year for the budget.

[Laughter.]

MS. STANISLAUS: We will try.

CHAIRMAN PERATA: I have one question.

I understand that your department is having a difficult time recruiting because of competition. Could you talk a little bit about that?

MS. STANISLAUS: Yes. Right now the problem we're having is, we are unable to recruit and retain qualified auditors. This year we had 11.9 percent vacancy rate, which is very high for the State of California, because each auditor brings in one million dollars per year.

We discussed this issue during our Budget Committee hearings, and we are glad to note that there is going to be a five percent increase next year for our auditors.

Regardless of that, we are also increasing our recruitment strategy tactics. We are going into the colleges. We are having auditor training exams on the web, and focusing on different efforts to enhance, to retain, and attract qualified auditors.

CHAIRMAN PERATA: Is it true that the IRS in this area pays 20 percent more than we do?

MS. STANISLAUS: That is true, and they also have a $5,000 signing bonus, so it's hard for us to compete with the IRS. And actually, the city pays more, the government pays more, and also the private sector pays more.

CHAIRMAN PERATA: Thank you.

Questions? We have a motion to approve by your chewing.

SENATOR BOWEN: It's lunch; I'm sorry.

Can you talk a little bit about where we are with the child support system? There's obviously a federal penalty at stake once again for our difficulties before you arrived. Can you just update us on the status of the child support system?

MS. STANISLAUS: I'm happy to note that since 1998, we have been paying over $200 million per year as federal penalties for the child support.

I'm happy to note that this year, we will be on target, and we will be able to meet our guideline and federal certification. What that means is that the penalties will be going away.

SENATOR BOWEN: Great, thank you.

You talked a little bit about auditors, and the difficulty with recruiting auditors. I had no idea that the Internal Revenue Service paid a signing bonus, very interesting.

It's my understanding that like many other agencies, you are also dealing with management staff generally, and the problem of people, there's sort of a bulge in upper management.

That didn't come out the way I intended it to.

But we have many senior management staff leaving. How are you dealing with that problem?

MS. STANISLAUS: At Franchise Tax Board, the retirement rate generally is 3.3 percent, which is quite low. However, the senior management rate is pretty high, which is 19

percent.

In comparison with EDD and BOE, it is not that high, but we're taking it very, very seriously.

We have started a job rotation program where senior management is rotated throughout the entire Franchise Tax Board, so that when a person leaves, there is no lack of expertise because the rest of the staff has learned that work.

SENATOR BOWEN: That kind of number would suggest that people were retiring, may be retiring early and going on to a second career.

MS. STANISLAUS: That is correct. People are retiring and moving to a second career. For example, the previous Executive Officer is now in private work, and a few of our executive officers, the one before, too, has done private work. So, a lot of our senior management teams, once they retire, they get absorbed by private industry because we believe that we have a great deal of training and good foundation at Franchise Tax Board.

SENATOR BOWEN: So, that's a difficult issue to combat.

MS. STANISLAUS: Yes, that is correct.

SENATOR BOWEN: A couple of other questions. One has to do with, and this is my version of drivers licenses, it has to do with the acceptance of credit cards by the agency.

It's my understanding that Franchise Tax Board, like most state agencies, takes credit card payments, but charges people a two-and-a-half percent fee, in this case because your contract specifies that.

My question to you is whether you have evaluated the costs of processing paper checks, either at the counter or in the mail? And how many people move from credit card payments to another form of payment because they want to avoid the two-and-a-half percent, and whether it costs you more when they do that?

MS. STANISLAUS: Yes, we have looked at that issue many times, Senator.

Right now we realize a saving of 87 cents if payment is processed through credit cards as opposed to the check process.

The fee for the credit card company is a convenience fee which the taxpayer pays to them, so we don't get any part of that fee.

The concern we've had is, if it moved towards absorbing the convenience fee, it's going to be a huge financial drain to Franchise Tax Board.

SENATOR BOWEN: But your calculation of 87 cents can't possibly include the cost of bounced checks and uncollectible checks, which is a problem that you don't have with credit card payments.

MS. STANISLAUS: It does include the bounced checks, but I'm not very sure at this point whether it includes the collection part of it.

SENATOR BOWEN: How much of the alternate payments -- I would assume with FTB, unlike DMV, most of the alternates come in the mail?

MS. STANISLAUS: Yes, that is correct.

SENATOR BOWEN: With DMV, with this issue, or many of our other agencies that are more retail, what you see is a very large increase in counter staff that have to take the payments.

I'd very much like to see a break-down of where that 87 cents comes from. You know that in the private sector, if you look at just large nonprofits, they all are urging people to pay by credit card because they don't have the float. They reduce their costs of tracking down people whose checks bounce. There are a whole host of savings.

And it has always puzzled me why it is that that trend is ubiquitous in the private sector, both for retailers and for nonprofits, and yet we haven't moved in that direction in the government at all.

MS. STANISLAUS: The Franchise Tax Board's Board Members have asked me to take a look at this issue, which I am doing. The Department of General Services is also looking at this issue very closely, and we are a part of that plan, workforce plan.

SENATOR BOWEN: Great.

And final question is probably the most difficult one, and it has to do with the underground economy. And this is a place where I think the auditors are relevant.

What's the strategy been to deal with the very significant number of enterprises that are not paying any tax at all, which is not only a loss to the state's treasury, but also is a competitive disadvantage, a very unfair competitive disadvantage to those businesses and enterprises that are paying

their taxes?

MS. STANISLAUS: Yes. The Franchise Tax Board is working on what we call the Tax Gap Strategic Plan. We have drafted a plan, and we've showcased that to our FTB advisory group. And the plan is going before the FTB Board Members, which is the next board meeting is in September.

This issue has been explained and is part of the plan. Right now we have, according to the federal numbers, we have a 6.5 billion tax gap in the State of California annually. This is the underground economy.

So, the plan will be able to -- has different initiatives which address this issue.

SENATOR BOWEN: Can you tell me a little bit about what those initiatives would be like? What are you planning to do that's different than what's happened in the past?

MS. STANISLAUS: We're planning on looking at, for example, let's take the Los Angeles area. We have a large minority population that deals with cash economy.

So, one of our strategies is to go to those communities and educate them first as to what their tax filing burden is, and what they should be doing to file the taxes.

And thereafter, the next part is the compliance part it, where we will audit those businesses and, hopefully, be able to garner those revenues.

SENATOR BOWEN: So you're going to start with an education effort so that you try to get compliance before somebody learns that they owe taxes because somebody's there,

demanding a payment that they haven't made any plans for?

MS. STANISLAUS: Yes.

SENATOR BOWEN: Will you be going out in other languages then?

MS. STANISLAUS: Oh, yes. In fact, a couple of weeks ago in Los Angeles, we had a Korean individual there to explain to the Korean communities the tax burden and the tax filing burden.

SENATOR BOWEN: Great. Thank you very much for your answers.

MS. STANISLAUS: Thank you.

CHAIRMAN PERATA: You mentioned you have family here?

MS. STANISLAUS: Yes, I do. I have my husband here, and my mother-in-law, who flew in from Sri Lanka to be here. They're in the back.

CHAIRMAN PERATA: How nice. Do you want to stand up? Welcome.

Anybody here -- now, don't forget, her mother's here -- anybody here in support or opposition?

This, I'm sure, is in support.

MR. MICHELLI: It is.

Mr. Chairman and Members, Chris Michelli. I'm here actually as an individual and not on behalf of any clients. And I do so because I had the opportunity --

CHAIRMAN PERATA: We should bronze this moment.

[Laughter.]

MR. MICHELLI: It's definitely a rare occasion.

We care about what clients think, not us individually.

But I do so because I had the opportunity -- have had the opportunity to work many years with Selvi at the Board of Equalization in the Appeals Division and in her role the last half year at the FTB. And the experience that I've seen is somebody who is very open, not only to considering all aspects of issues to solve them, as Board Member Yee indicated, but somebody who puts significant time and study into resolving issues so that you achieve the fairest administration of the tax laws.

And I think that's important for you as Senators to know because, although it's governed by a three-member board, the Executive Officer obviously runs the day-to-day operations at the FTB. And I think the most that taxpayers can hope for is fair and equitable and consistent administration of the tax laws in this state. That's, I think, what Selvi will bring to this job.

So, I would urge you to confirm her. Thanks.

CHAIRMAN PERATA: Anyone further?

SENATOR BATTIN: Move.

CHAIRMAN PERATA: With that, we have a motion to approve. Call the roll, please.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Bowen.

SENATOR BOWEN: Aye.

SECRETARY WEBB: Bowen Aye. Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Battin.

SENATOR BATTIN: Aye.

SECRETARY WEBB: Battin Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Five to zero.

CHAIRMAN PERATA: Five-zero, we recommend your approval. Congratulations.

MS. STANISLAUS: Thank you so much.

CHAIRMAN PERATA: The next item is Margo Brown as Member of the California Integrated Waste Management Board.

If Richard Costigan is listening, you'd better get up here because this is going to be a tough, tough appointment.

[Laughter.]

CHAIRMAN PERATA: Welcome.

MS. BROWN: Thank you.

CHAIRMAN PERATA: I'm not used to not seeing you downstairs.

MS. BROWN: I know. I'm pleased to be here, Senator Perata.

CHAIRMAN PERATA: Are those two young girls yours?

MS. BROWN: They are. Can I introduce my family?

CHAIRMAN PERATA: Yes, please.

MS. BROWN: And I apologize, there's a lot of them, being a native Sacramentan, so bear with me.

I have my husband, Rick, here; my daughters

Carolina and Katie. And on this side of the room, my parents John and Caroline Reid; my sister Maria Vail; and my brother Grif Reid and his wife Christie.

CHAIRMAN PERATA: Terrific. Welcome all.

MS. BROWN: If Richard's hearing, they're here to support me, in case you don't get up here.

[Laughter.]

SENATOR ASHBURN: It probably will be better if he doesn't.

[Laughter.]

MS. BROWN: I hope I can carry it on my own.

Good afternoon, Chairman Perata and Members of the Rules Committee.

I am honored to be here today to present myself as an appointee of the Integrated Waste Management Board, and to share with you what I hope to accomplish at the board.

I'm excited to be at the board because over the years, we've seen a sea change about how we look at waste and how we utilize our resources. No longer is it acceptable to handle waste indiscriminately, nor is it acceptable to throw away resources that can recycled or reused.

These are principles and practices that the board has made part of the California experience, and it's happening through a variety of programs and initiatives that demonstrate our state's world-reknown leadership in resource conservation and waste management.

That is why I'm proud to have been elected unanimously as Chair of the Board by my colleagues, and I have

worked hard to return that trust by providing leadership that respects the diversity found in the board's membership, and the reality that the board's membership depends on this relevance and working together, and aggressively so.

I hope to provide the personal leadership and vision that will ensure the board gives staff clear direction, sets measurable goals and clear priorities, and holds itself accountable to achieving those priorities. This will allow us to improve our efficiency and our effectiveness, keep our policies moving forward, and get real results that serve our greatest, highest aspirations.

In the area of program goals, I intend to focus on addressing the next 50 percent of the waste stream in California, and doing that through market development efforts, ensure the board provides tools for local government and its partners that will help move us towards zero waste, strengthening our enforcement efforts, including our statutory authority to ensure the public health and safety of the environment are safe-guarded.

As we have seen, waste diversion efforts have been successful thus far, but with our expanding economy and population, waste generation continues to keep up with diversion, and with that, a still heavy reliance on landfills. If we don't take bold action from here, it will be like trying to move forward while walking on a treadmill.

To make a real impact, we need to look seriously at waste [sic] to reduce waste, moreover, prevent waste in the first place. We need to create incentives for industry to

reduce consumer product packaging and embrace sustainability through recycled content and recycled design.

There can be no doubt that California has become the model for the nation in managing waste, but now is the time to build on that foundation and take bold action and continue the legacy of AB 939, improve the fundamental function of the board, and explore new opportunities tc divert waste and conserve our resources.

I look forward to working with Legislature, local government, the environmental community, and the public and industry to do the work of the people and create a stronger, cleaner, more sustainable California.

Thank you very much, and I look forward to answering any of your questions after one quick -- I want to, Senator Perata, thank you and your staff, especially Nettie Sabelhaus, for helping me prepare for today. Thank you very much.

CHAIRMAN PERATA: Mommy did really well.

[Laughter.]

CHAIRMAN PERATA: And thank you. We appreciate, all of us appreciate Nettie's hard work.

You did a good job, Nettie.

I represent an area that probably has more recycling zealots than any other place on the planet. We also have some of the biggest waste dumps.

You touched on the fact that we're running out of space. There has been some criticism over the years that the Waste Board has kind of lost its way and deviated from its

primary mission.

You said bold action is going to be needed. Examples of what you have in mind?

MS. BROWN: Well, I think we need to take -- refocus the board staff and look very strongly at market development activities. We need to look at where we can make inroads in specific product areas, like consumer product packaging, and reducing the amount of packaging that goes into landfill.

We've become a society that is convenience, and with convenience comes the ease of disposability. We need to actually work with industry more closely on looking at product stewardship and consumer and product manufacturer responsibility.

CHAIRMAN PERATA: You don't have the authority to levy a fee at the manufacturing site, do you?

MS. BROWN: We -- through the legislative mandates, industry has minimum content standards for certain products, like rigid plastic containers, trash bags. So, there is minimum content standards for recycled material, but we can't levy.

CHAIRMAN PERATA: Debra.

SENATOR BOWEN: My staff apparently didn't prepare me very well, because I don't have anything to set on fire, nor do I have a lighter.

[Laughter.]

MS. BROWN: I was ready.

SENATOR BOWEN: Actually the thing I most wanted

to ask about is the issues surrounding the enforcement of the solid waste laws and standards because for many years, there's been criticism that there hasn't been good enforcement.

In your answer, you mentioned that the board has identified some of the barriers, I was curious what those might be?

MS. BROWN: We do, through the LEA process, we evaluate the LEAs every three years for their enforcement of facilities. And if there is not strong enforcement, we can -- where we do work with the LEAs for stricter enforcement, we've put more effort into training our LEAs and working with them.

But if there is an imminent danger, we can step in with the LEAs.

We have a constant and corrective action through the process of permits, where we review what the LEAs are doing, and that's constantly being reviewed.

The board has identified a couple of statutory barriers. We don't have the ability to enforce, other than civil penalties, we cannot enforce criminal penalties for a violation of solid waste laws and regulations, but we do work with local governments to -- and the District Attorneys Association on illegal dumping issues. We have started an illegal dumping task force to assist local jurisdictions with their local dumping.

I know staff has also identified a few barriers, which I'd be happy to explore with you further.

SENATOR BOWEN: I think with regard to the criminal prosecutions, I don't think any state agency has the

authority to bring criminal prosecutions. It has to be referred to the district attorney or, in some instances, the Attorney General.

MS. BROWN: And we do have a contract with the District Attorneys Association to work in rural communities to enforce penalties for solid waste laws and regulation violations.

SENATOR BOWEN: Do you track the instances in which you refer something for criminal prosecution? Do you have any kind of records about the number of referrals, number of cases that are pursued?

Just because you refer something doesn't mean it has to be pursued. Then look at the patterns for where you're successful?

MS. BROWN: We do. The board keeps track of that information, and I can get that to you. We've just renewed and done our second contract with the California District Attorneys Association to help, especially rural communities, with prosecution for violations where they --

SENATOR BOWEN: I could send you right out to my road here, where recently a sofa appeared. This was right before all the rain. By the time it disappeared, it was pretty ripe.

MS. BROWN: The City of Sacramento, Los Angeles, and the County of Sacramento have grants and matching grants on our illegal dumping task force to combat neighborhood clean up.

SENATOR BOWEN: This is actually rural, not neighborhood.

But I think it's a very difficult problem because you're essentially trying to police areas where there's almost no traffic, and that's where people choose. Tire dumping certainly was a huge issue until we changed the fee structure. When we had a fee structure that required a fee when you disposed of the tire, even a 50-cent fee, people avoided paying two dollars and dumped the tires instead. Now with the fee imposed when you purchase the tire, we've solved that problem.

Are there other places where we have created barriers to recycling, or basically pushed people to consider dumping who would not otherwise have done so because of a recycling fee that's imposed at the capture.

I'm particularly concerned about the fee that we have on electronic goods right now. You have to pay to get somebody to take a dead tv set off your hands.

MS. BROWN: Well, with the E Waste Recycling Act, we have seen a great success in the collection of electronic waste throughout the state. Just in 2005, we collected 60 million pounds of electronic waste in the State of California. And in the first quarter of 2006, we're at nearly 25 million pounds.

So, most of our local jurisdictions are having collection events. There are collection recyclers who are collecting now because there is a fee associated with the electronic waste collection.

SENATOR BOWEN: So, you're not finding that people object to the fee and instead drive on by the collection point, out to some place where they can just heave the dead tv

out the door and not pay the $40?

MS. BROWN: Well, the fee -- the new E Waste Recycling Act fee is imposed on the consumer at the point of purchase. So, the collection is done at the point of purchase.

SENATOR BOWEN: I actually haven't recycled anything this year. Does that mean that if I take a dead tv in this year, I don't pay the collection fee?

MS. BROWN: Yes. There are 440 certified collectors that can take any tv you have.

SENATOR BOWEN: That's good, because as we move to HD TV, I think we're going to see a lot of tvs.

MS. BROWN: We have anticipated that there will be.

SENATOR BOWEN: So, that's great.

And I'm also really pleased to hear that you're going to take on the packaging issue. One of the gripes that I hear all the time from members of my own family as well as from constituents is, when they pick up a package of, oh, say a ZIP drive that's the size of your finger, and the packaging is nonrecyclable, and the size of a small notebook.

So, that's a place where I think education of the industry would be helpful. And I understand there are concerns about loss, and not wanting to have a package that's so small that it can disappear into somebody's pants pockets, but there has to be a compromise there somewhere that works for everyone.

MS. BROWN: There is, and we share your concern with that and look forward to working with the Legislature on that.

SENATOR BOWEN: I'd love to see a Most Excessive Packaging of the Year Award given, and let Californians send in their nominees for that.

CHAIRMAN PERATA: Joe Simitian will do that.

[Laughter.]

SENATOR BOWEN: Good. We'll have Mr. Simitian do that, and he can get the results to you.

Thanks for your time.

MS. BROWN: Thank you, Senator.

CHAIRMAN PERATA: Tell us some more about that sofa.

[Laughter.]

MS. BROWN: The ripe sofa.

SENATOR BOWEN: You know, it was a real nice plaid one.

MS. BROWN: I've been looking for a reusable sofa for my office.

CHAIRMAN PERATA: Your office should be done all in recyclables.

MS. BROWN: We had a picture of a sofa on one of the tribal lands that looked quite appealing, but the cost of moving it was probably prohibitive.

CHAIRMAN PERATA: Anybody else?

I wanted to ask you about methane gas. There's been lots of talk about greenhouse emissions, and the Governor had Tony Blair here to talk about what we should collectively.

That is a problem emanating from landfills. What's the status? Are we doing anything about that?

MS. BROWN: As you know, the Integrated Waste Management Board is a part of the Climate Action Team, and we do have three goals that we are working on. One is, achieve 50 percent recycling. Another is high recycling, and then the reduction of methane gas capture.

And the board is working aggressively on studying ways to better capture methane.

We do need a good baseline, which is what we will probably first be working on, is a good baseline at which to measure what our methane reductions will be. And as you know, there's probably a lot of opportunity for landfill gas to LNG, landfill gas to methane to hydrogen.

So, where we can help and participate in the Climate Action Team's goals of reducing greenhouse gas emissions, we are proud to be a part of that.

CHAIRMAN PERATA: I send for Richard Costigan and I get Josh Pane.

[Laughter.]

CHAIRMAN PERATA: Would anybody like to come up and speak in favor of the nominee? You can be brief. She's in her mother's arms.

MR. APREA: Senator Perata, Members of the Committee, Marc Aprea.

I'm pleased to appear before you today in support of Margo Brown's confirmation.

My family and I have known Margo for about -- Margo and her family -- for about ten years. And I can tell you from personal experience that she is extremely well qualified to

serve not only on the board but as its chair.

As we mentioned in our letter, her strength is really her ability to bring the organization together, move it forward, and maintain its fiscal responsibility.

And as her husband will I'm sure attest, those same skills apply to the home front.

But all kidding aside, the State of California has really benefitted by her service, and we would urge her confirmation.

CHAIRMAN PERATA: Thank you.

MS. HUNTER: Mr. Chair and Members, Yvonne Hunter with the League of California Cities.

In keeping with your suggestion, I'll be brief.

The League of Cities supports Margo's confirmation. We think she will make and has made a great Chair, and will bring very good leadership skills. We look forward to working with her.

Thank you.

CHAIRMAN PERATA: Thank you.

MS. BRANDENBURG: Thank you. My name is Katherine Brandenburg, and I'm with the Flanigan law firm.

We represent the Institute of --

CHAIRMAN PERATA: I didn't know they had any women working for them.

MS. BRANDENBURG: Can you believe, I'm the one and only.

CHAIRMAN PERATA: Margo, you should feel honored.

MS. BROWN: I am honored.

[Laughter.]

MS. BRANDENBURG: You should have received a letter from Tim Flanigan recommending her confirmation.

And also, I have worked with Margo in the past and really appreciate everything she has done at the board.

On a personal level, I think she is also a great person and a great person for the board.

CHAIRMAN PERATA: Thank you.

MS. BRANDENBURG: Thank you.

MS. BROWN: You make me sit here and wonder what's coming next.

CHAIRMAN PERATA: I know. This is the plus side.

MR. HELGET: Mr. Chairman and Members of the Committee, my name's Chuck Helget. I represent Allied Waste Industries and BFI, and we're here in very strong support of Margo's confirmation.

CHAIRMAN PERATA: Thank you.

MR. PANE: Mr. Chairman and Members, Josh Pane on behalf of the California Refuse Removal Council in strong support of the nominee.

CHAIRMAN PERATA: Thank you.

Anyone further? Anybody here in opposition?

Seeing none, you've introduced your family. Anyone else you want to introduce.

MS. BROWN: You want me to introduce more?

CHAIRMAN PERATA: There must be a lot of people here with neutral views.

[Laughter.]

SENATOR BATTIN: Move.

CHAIRMAN PERATA: We have a motion to approve. Call the roll, please.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Bowen.

SENATOR BOWEN: Aye.

SECRETARY WEBB: Bowen Aye. Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Battin.

SENATOR BATTIN: Aye.

SECRETARY WEBB: Battin Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Five to zero.

CHAIRMAN PERATA: Five-zero, we recommend. Congratulations. Keep up the good work.

We will not be offended if you leave.

Our final appointee for appearance today is Maureen Gorsen, Director of the Department of Toxic Substances Control, a mouthful to say.

MS. GORSEN: Good afternoon.

CHAIRMAN PERATA: Welcome.

MS. GORSEN: Thank you.

Mr. Chairman and Members of the Committee, I'm pleased to appear for confirmation as Director of the Department of Toxic Substances Control.

And before I say a few remarks, I would like to introduce some important people to me.

CHAIRMAN PERATA: Good for you.

MS. GORSEN: My husband and my rock for the past 18 years, Mitchell. Also here are my son Benjamin, a baseball player who will be entering fifth grade next week, and my son Zachary, a Star Wars fan and a future mathematician who will be entering third grade.

CHAIRMAN PERATA: Welcome.

MS. GORSEN: All of them have been becoming very self-sufficient as a result of my new job.

It's an incredible honor to be nominated by Governor Schwarzenegger to this critical position.

I have served as an appointee in several positions at the Resources Agency and Cal EPA, but none are quite so daunting or with the potential for effecting the everyday lives of Californians as the Director of DTSC.

My objectives for the department are outlined in my written responses to your questions, and I'm just going to briefly highlight a few.

As a manager of a department of 1,000 staff and $169 million, I am looking to allocate those resources to the highest best uses to maximize environmental benefits. And to that end, I will try to organize and manage DTSC around the achievement of environmental benefits and results rather than our day-to-day activities.

The first step in that is to develop indicators based on the environmental outcomes that the Legislature has asked DTSC to achieve. We'll be developing indicators to gauge our success in determining how we have reduced the risk of

exposures from toxic chemicals in our environment, how we've cleaned our groundwater and drinking water, and how healthy are our communities.

A second way we will be managing the department is with full transparency. We serve the public, and everything we do, we do for the public. The public is extremely involved in the community clean-ups that we're doing, over 400 throughout the State of California. If they don't like what we're doing, then they have the right to ask us to do something different.

We're looking to create the fullest possible transparency at all levels. One of the first things we've done is taken the 5,000 brownfields that are currently in the system and put them on our internet site so that people can search by their ZIP Code and find what's in their community, what contaminants are in the community, what potential health risks are posed by those contaminants.

We do a lot of permitting of hazardous waste facilities, and we're looking to create the same level of public involvement and transparency that we have managed to create on the brownfield side. This is an area we will be trying to improve, including having a more transparent public hearing process involved in the appeals of our permits.

There are three specific program areas we will be focusing on. First and foremost is brownfields, which is cleaning up the legacy of California's industrial past. We are working on increasing the department's capacity and speed in getting these sites cleaned up without any reduction in our high environmental protection standards or our robust public

participation requirements, with the goal to protect the community's health, to maximize reuse of existing urban spaces, and to preserve open space habitat and agricultural lands.

Secondly, we will be focusing on DTSC's strengths in the present management of hazardous waste in our society through our enforcement and emergency response programs to ensure that toxic chemicals used in the present are safely handled and securely, and don't pose threats to the public or to the environment.

Lastly, we'll be focusing on the future, preventing pollution in the future, integrating pollution prevention into our traditional regulatory programs to prevent pollution at the front end rather than -- and reduce the need to regulate at the back end. And if we are successful, we will work ourselves out of our jobs.

I hope that I've given the Members of the Committee a sense of where I would lead the department if confirmed. I thank you for your time, and I look forward to answering your questions.

CHAIRMAN PERATA: Thank you.

Brownfields. Since we do have this robust policy of public participation -- that's a very gentle way of putting it -- and we are often criticized in this state for over-regulation, and the ability for a small group of individuals to stymie a project, one of the ways, without changing the access and robustity, robustness, is to consolidate things on the other end. We have multiple agencies that get involved.

What's going on in the area of consolidation? If nothing, somebody's got to take the lead on it. You sure don't want the Legislature to design it for you.

It seems to me that in addition to transparency, if we can weed out redundancy. Is there anything going on?

MS. GORSEN: You know, we're doing hundreds of brownfield sites, and yet there are thousands of brownfield sites in the state.

Currently the jurisdiction for brownfields is distributed among several state agencies.

CHAIRMAN PERATA: How many? Where are they?

MS. GORSEN: With the regional boards and DTSC. There nine regional boards and there's us.

The issue -- I don't think, you know, when I look at the statutory requirements for public participation, and then the things that we do in excess of that, that's not -- I think that process has been unfairly blamed for our slowness in cleaning up brownfields.

I've been looking at how we do it, and I think there's a lot of things that can be done just in terms of how we manage our resources, designing multi-disciplinary teams, improving our internal communication, and just even developing management tracking systems. That will reduce by half, and possibly half again, the speed with which we do brownfields without sacrificing any of the public's rights to be involved or anything like that.

As for consolidation, I don't think there are any proposals on the table at this time. I don't even think there

need to be, because there's plenty of brownfields to go around.

CHAIRMAN PERATA: Speaking of which, Zeneca in Richmond.

MS. GORSEN: Yes.

CHAIRMAN PERATA: Are you familiar with it?

MS. GORSEN: Yes. It's one of our high profile sites. And it's a site where we are employing this new team approach to brownfields in order to -- because the way we do brownfields, it's a very multi-disciplinary activity. You've got toxicologists; you have geologists; you have engineers; you have public participation people, CEQA people. So there's sort of the left brain and the right brain within the department's 1,000 employees.

CHAIRMAN PERATA: Before you got there, there was like no brain.

MS. GORSEN: No, no, no, no.

CHAIRMAN PERATA: I'm just asking you to comment.

MS. GORSEN: The left brain and the right brain weren't always in sinc, so now the left brain and the right brain on Zeneca -- this is our first model program. We're putting them together, designing them as a team, with the singular objective of achieving community public health goals, as opposed to the specific discipline's goals.

CHAIRMAN PERATA: It's apparent.

MS. GORSEN: Yes. I believe that it has been a resounding success. Now we're looking at importing that to larger groups of projects rather than just one project at a time.

CHAIRMAN PERATA: Thank you.

SENATOR BOWEN: Let me start with something that should be pretty easy.

We have recently required batteries to be recycled. And my guess is, if you went out and did a survey of how many Californians know that they can't throw their batteries in the trash can anymore, that the numbers wouldn't be very good.

My guess further is that if you did the same survey in this building, the numbers wouldn't be be very good.

Part of the problem is, we don't have a place to take them that's not a major hassle.

So my question to you, and I thought about whether this was a Waste Management Board question or a DTSC question, but it's really DTSC question because they're toxic. That's why we don't want them in landfills.

What can we do to establish facilities in, at the very least, State of California work places and an awareness campaign so that we've got a place in this building, at least, as an example, and perhaps the other citizens, the fourth grade classes that come through here will see the battery recycling place, as they see the can and bottle places.

But again, because they're toxic, it's different. I don't think the Waste Board can set that up.

MS. GORSEN: Actually, we have split jurisdiction on this because they do loans and grants to the household hazardous waste facilities. And I know that they're dedicating a huge portion this year to the household hazardous waste

facilities, which are located in local governments to be able to take the batteries back.

On our end, we have been doing an outreach and education campaign. A lot of it is coming through your garbage bills with notices on where to take it, what practices. The web site is out there. There's been a lot of press activity on there.

Our biggest effort, though, is working with retailers in the Take-It-Back partnership, to take back the batteries. We have -- over 450 retailers in California have already started taking it back, as well as large employers allowing employees to take it back in buckets that are located throughout their offices.

SENATOR BOWEN: Have you worked with the Department of General Services so that we can create buckets in the Capitol Building?

I think it's great to work on the household level. The number of people who read the insert that comes in their trash bill is pretty small. I read it, but I'm convinced that I'm the only person I know who is not a committee consultant who reads the insert on the bill. You only read it if you're working on changing what needs to go on there.

CHAIRMAN PERATA: I don't know if you want to make a big deal about doing that.

[Laughter.]

MS. GORSEN: We're also working with the Waste Board to fund public service announcements and increase the outreach.

The Take-It-Back Program, though, a lot of the retailers, we have all of the IKEA stores in California, now Goodwill Industries, which is voluntarily taking back the E waste, is agreeing to take back the U waste. We're talking to Bridget Luther at the Department of Conservation, because all of those convenience centers that are taking back bottles can also take back U waste as well.

SENATOR BOWEN: But I'm just thinking about, if I look around just this room at the number of batteries that people who are sitting in this room currently have on their person in some device, it's a fairly significant number.

Then, if you go up to our offices and think about the various remotes for this or that, or the telephone, or whatever it is that has a battery in it, it's a significant number.

And yet, we have no mechanism in the state's office buildings for collecting the waste not that people generate at home, but the waste that we ourselves generate in the course of our work.

MS. GORSEN: Yes, I think you raise a very good point, Senator. And I know that the Cal EPA has been dedicated to having the state agencies be leaders in green building practices, and I will bring this back and make sure this becomes a priority at the department.

SENATOR BOWEN: And I'll talk to the Governor's Office, too. I think it'd be great to have a battery recycling place right next to the cigar ash depository. That's my dream of recycling.

The second issue that I want to talk to you about is a little more difficult. In one of the answers to the Committee's written questions you talk a little about making the department more open and transparent.

In light of that, we need to discuss your recusal in the case of Boeing and the very controversial cleanup of the Santa Susana Field Laboratory on the LA-Ventura County border. I know you're familiar with it.

Can you tell me when and why you decided to recuse yourself in this matter?

MS. GORSEN: Yes.

When I was a partner at a law firm in Los Angeles, that firm represented Boeing. And I did provide environmental counseling and compliance advice to Boeing.

When I took office with the department, I had three lawyers look at whether I had a conflict, what were my ethical duties under the Bar.

I don't have a conflict under the Political Reform Act because there's no pecuniary relationship, but I do have a duty of confidentiality to Boeing as their former attorney, and therefore I require setting up an ethical screen and not participate in decisions relating to the cleanup at the Santa Susana site.

SENATOR BOWEN: So, is that the same as recusal or different?

MS. GORSEN: Excuse me?

SENATOR BOWEN: Is that the same, not participating in decisions, is that the equivalent to recusal?

MS. GORSEN: Yes, yes.

SENATOR BOWEN: Just checking. I want to make sure our terminology use is the same.

When was that decision made?

MS. GORSEN: Upon taking office in January.

SENATOR BOWEN: But you met with the developer, Centex, in June of 2006?

MS. GORSEN: Yes.

SENATOR BOWEN: If you are not going to partcipate in the decision making, why are you meeting with the developer?

MS. GORSEN: The Boeing site is a giant cleanup site being done by Boeing. Centex is a developer who is developing houses that are near the Boeing site, but they are not the same projects. We have a separate voluntary cleanup agreement with Centex.

My calendar on that day, I meet with everybody who's dealing with the department. And when that meeting was scheduled, I looked at my recusal. I had not formally represented Centex, and therefore I didn't see any problem with meeting with them.

Of course, now that I understand in the community's mind that the two sites are linked, even though our staff has not found any physical evidence of a link between the sites yet, I agree with you that I should have not met with them at that time.

SENATOR BOWEN: So are the contaminants -- you'll have to excuse me. I'm actually probably not as familiar.

Well, I'm sure I'm not, given that I didn't use to represent Boeing on this issue, despite the fact that I have represented Boeing in my district. I'm just not well aware of what's happened here.

The contaminants on the Santa Susana site are from a different source then, than from the contaminants that we're dealing with on the Centex site?

MS. GORSEN: On the Centex site, that's a housing project, and our staff is currently doing an investigation of the site before they venture to do a voluntary cleanup agreement.

And right now, it's not clear what the level of contamination is or what the sources of that contamination are because they're in the middle of that investigation.

SENATOR BOWEN: So, you don't have a responsible party who's identified, who's paying for the cleanup? The developer's doing it because they want to develop, and they can't develop without it being cleaned up?

MS. GORSEN: That's correct.

SENATOR BOWEN: But it's possible that at some point --

MS. GORSEN: It's possible at some point in our investigations we will learn that there is contamination at the site, and that it emanates from Boeing.

SENATOR BOWEN: Okay.

How do we deal, and this is a question for all of us at the state level, I think, with how you interact. I think you may have answered this question. Once you recused yourself,

you really should just not be meeting with parties at all, and you weren't aware that Centex had some relationship.

I think the next question, and it's a real question, a difficult one, who do members of the public hold responsible, hold accountable, who do they go to for issues surrounding the cleanup and for concerns about it if the head of DTSC has had to recuse herself?

And let me just say that these are difficult questions, and I don't want to send the message that we don't want to have nominees for positions like this who don't have real world experience working in those areas. And I, myself, when I took office in 1992, had to deal with the issues of recusal because I had also practiced law, and I had practiced before the Coastal Commission, and there were questions about where I had to stop in the middle of a case, and what the difference was between what the law required and how it looked to people, which I think you know are different.

How in your view should we handle a situation in which a department director has to recuse him or herself because of a potential conflict, or because they just thing it's in the best interest of the public? Should there be somebody designated officially?

MS. GORSEN: Yes. On the advice of my attorneys in January, we set up an ethical screen, and we designated a director for the project, which is the Office of the Chief Deputy. So, the Office of the Chief Deputy is an exempt appointment, and they will act as the director in those matters for which I'm recused.

SENATOR BOWEN: So there is officially a place where the buck stops in the event that there's --

MS. GORSEN: Absolutely, and that person is responsive to the Legislature and the Governor and the people.

SENATOR BOWEN: And given your work at the law firm, and I again want to say that it's a firm that I have the utmost respect for. It does high quality legal work. It's known for its expertise and its high ethical standards.

So, I don't want any of those questions to be construed as being the wrong way. I think they're difficult issues for all of us as we take people from the private sector, where they make five times, ten times more money, and ask them to do public service, to have people yelling at them, to have people upset at them from both sides, for a whole lot less pay and a lot more hours, and with the only benefit that your children learn how to be self-sufficient and to probably operate a lot more cooking equipment than many of the legislative spouses.

Do you envision any other cases where you might have to recuse yourself, or do you think that's --

MS. GORSEN: No, there's other clients. And I created an ethical screen for those clients as well.

SENATOR BOWEN: Given your deputy, an exempt appointment, is not confirmed by this Committee; you are.

MS. GORSEN: Yes.

SENATOR BOWEN: Should we be thinking about doing something else in a situation where, because somebody's done a lot of legal work, or whatever it is, could be consulting,

whether we ought to have a different process?

We don't have the same level of accountability with a deputy. In fact, I don't even know the person's name, and I do know your name.

MS. GORSEN: You know, I think the Office of the Chief Deputy is an exempt appointment, and I think is responsive to the Governor and the public.

I know that his name is Leonard Robinson, and he is going to be meeting with the concerned parties and making sure that if we're not doing what we need to be doing in terms of building public confidence in the transparency of our processes, and we need to make changes, he will be making those changes, and he's authorized to do so.

SENATOR BOWEN: My difficulty is that I can talk to you in formal seating on the record about these issues. I can't talk to Mr. Robinson, whom I'm sure is a terrific person, and I expect that at some point I may get a call from him and we'll talk.

MS. GORSEN: But I think, though, if the Legislature is unhappy with the way things are going, they can hold a hearing on the matter, and he would be acting director in that matter and would be answerable to you.

SENATOR BOWEN: All right. That point's well taken.

Thank you very much for that frank discussion.

CHAIRMAN PERATA: Other questions from the dais?

SENATOR ASHBURN: Just a comment.

I was very, very impressed when we met and

discussed your analysis of the time that was consumed on cleanup projects.

I stepped out of the room so I didn't hear, but have you relayed to the Committee the amount of time that has been consumed on projects that are under your jurisdiction, just to give the public some understanding of the magnitude of what I view as a serious problem in terms of time?

MS. GORSEN: No, I did not share that data with them.

You know, in order to figure out what we need to do with brownfield cleanups, we had to do a baseline assessment. So, from January to about June, I asked staff to look at the past 508 cleanups we've done by type of cleanup and tell me what the average X variable, I call it the X variable, which is how much time were they with the department, so that we would have a baseline from which to measure how we're going to make improvements.

And the X variable for different types of projects, if you are a Federal Superfund site, your average time with the department is 19.3 years. If you're a state response site, your average time is 12.3 years. If you're a voluntary cleanup agreement, your average time is 6.5 years. And if you're a school site, your average time is 2.5 years.

We're doing model Gant charts on what happened there. And for the most part, it's just a lack of management goals and management tracking systems, and the multi-disciplinary -- meaning the toxicologists, geologists, public participation, the specialists -- kind of working it out

amongst themselves and not having somebody saying, "Okay, these things need to happen concurrently. They can't happen consecutively." And looking at how things flow through the department because, what we had was things flowing, and then somebody over here saying, "Oops," and they circle, and circle, and circle. They're in a circling pattern for a very long time.

So the idea is to get Gant charts and flows where we don't repeat parts of the process, and there's somebody looking at, you know, if we have a conflict between the geology perspective and the toxicology perspective, that we're resolving them and making decisions, and keeping the process moving.

But we can comply with CEQA. We can do gold, diamond-encrusted CEQA documents. We can do robust public participation requirements, all of that, in 18 months if we have no duplication along the process.

CHAIRMAN PERATA: Do you want to run our prison system?

[Laughter.]

MS. GORSEN: I think I have a big enough challenge here, Senator.

SENATOR BOWEN: Senator Perata, if you think it's a challenge to recruit auditors for the State Franchise Tax Board, imagine the difficulty that we are going to have recruiting people to do computer systems for the Department of Corrections. I want to plant that seed.

SENATOR BATTIN: Take them from the DMV.

[Laughter.]

SENATOR BOWEN: Think about what programmers can

get paid, and how desirable it might be viewed to a programmer who has all sorts of other options, including getting a signing bonus.

CHAIRMAN PERATA: You're probably wondering right about now: What are they talking about? This is what we do.

SENATOR ASHBURN: In my opinion, this individual has no doubt. There's no doubt about her ability to comprehend what we're talking about on these subjects or those under her jurisdiction.

California has the toughest environmental laws in the country, without dispute. But if we have the toughest laws, and the most complicated systems, and the systems can't solve problems, what is in heck good are they?

And that's what I am so impressed about in this nominee, is a management view, maybe not a technical view, that you have to organize your work before you can begin to accomplish the technical task.

The other point I wanted to make is in response to Senator Bowen's questions, which were appropriate with respect to those areas of recusal and nonparticipation because of a potential conflict.

It occurs to me that because of that, those particular projects may well end up receiving a higher degree of scrutiny and management than they otherwise would receive. And that's the other side of that argument.

But I wish you well. You have a daunting task, but the clearest vision that I've encountered.

SENATOR CEDILLO: I was just getting into this

fray here.

Senator Ashburn said we have the most rigorous and robust environmental laws in the country, as we should.

The problem is, we don't have systems, efficiencies, that are commensurate with what the laws are. So, people don't see problems get resolved, and therefore they focus on the laws and not the fact that we're ineffective.

So the question is, what can we, the state, do in terms of capacity and capacity building within the agency? So that we have 100,000 brownfields, and we're doing whatever numbers, hundreds. And those weren't necessarily problems of law. We've changed the law. But still, we have to change capacity.

But if we're only doing handfulls with 100,000, we are on a long, long track before we do what needs to be done. So what are the things the state can do to enhance your capacity, the capacity of the department?

MS. GORSEN: Well, you know, I'm looking at, you know, what I have to manage, a thousand employees and $169 million.

And probably the biggest difficulty for me to get to where the whole department is running like the Zeneca Project is the inflexibility in the DPA civil service classifications, and not being able to move people around into teams. So that's in terms of managing the workload and getting to the results we want, I've got a lot of rigidities in the system about how I can move resources. Fees are attached to certain activities and classifications. So, that's internally.

Externally, we're -- one of the things we've done is to allow CUPAs, local governments, to do small corrective actions, and by delegating and certifying local governments, you can increase the amount exponentially of brownfields cleanups that we're doing, and yet maintain the level of standards that we require in California. Because actually, we don't have to change the law or change the standards to get a greater volume of brownfields cleaned up.

SENATOR CEDILLO: What about this question, you talked about the challenges with civil service. Is this something where you need like some overhaul of job classifications to be more generic?

MS. GORSEN: Or to get more flexibility to move things around, yes.

CHAIRMAN PERATA: On the assumption that you're going to get confirmed, I'd like it if you'd ever spend a few minutes on how that might look, the flexibility, what you would need. I'd be really happy to look at that.

MS. GORSEN: Okay. It's a very complicated topic, but I'd be happy to explore it with you.

CHAIRMAN PERATA: Just talk really slowly and don't use big words.

[Laughter.]

CHAIRMAN PERATA: Do we have anybody here to speak in favor of the nominee?

MR. BAKER: Steve Baker with Aaron Read and Associates. We represent the Professional Engineers in California Government and the California Association of

Professional Scientists, both of which support Ms. Gorsen's appointment here.

I happened to be present when the Board of Directors for CAPS took up this issue, and the employees of the department spoke in overly glowing terms about the job that Ms. Gorsen's done in her current tenure, and talked about the open-door policy she mentioned. I know she goes around and meets with each of the employees, and has spent time just chatting with the employees about what can be done to improve the department.

I've heard a lot of griping over the years about the way the department's been run, regardless of the administration. This is the first time we've heard just glowing great things, and glad to have her here.

Thank you.

CHAIRMAN PERATA: Thank you.

MR. APREA: Senator Perata, Marc Aprea.

And I want to echo the comments that have been made previously, that Ms. Gorsen has been very, very open and transparent in terms of how she's dealt with the department.

I've known her and her husband for about seven years, and I can tell you that it is part of her character in terms of how she approaches work. And we would urge your confirmation.

CHAIRMAN PERATA: What the hell neighborhood do you live in?

[Laughter.]

MR. APREA: A very good neighborhood.

CHAIRMAN PERATA: I guess, with a lot of block parties.

MR. HOFFMAN: Good afternoon Mr. Chair and Members. My name is Bob Hoffman. I'm with Paul Hastings.

I've known Maureen since the early '90s. Worked with her both in government and out.

What you see here today is the real deal. She's not only intelligent and thoughtful, but she's very committed. And on behalf of both the Zeneca Project and my private clients, we wholeheartedly support her nomination.

Thanks.

CHAIRMAN PERATA: Thank you.

SENATOR BOWEN: Move the nomination.

CHAIRMAN PERATA: We have a motion to approve.

Can I ask, is there anybody who wants to speak in opposition in front of the two boys?

[Laughter.]

CHAIRMAN PERATA: I have one question that I failed to ask.

I'm carrying a biomonitoring bill, which I am hopeful might be signed by the Governor. Even though it doesn't have directly to do with your agency, in your responses you said the department is looking only at the persistent bioaccumulative toxins and endocrine disruptors found in hazardous waste.

Now, you can't use those words with me because that's well beyond my scope.

What does that mean?

MS. GORSEN: Essentially, you know, we are

looking at toxic substances in the environment and exposures to human health and also to the ecology.

We actually have some of the leading researchers on endocrine disruptors at DTSC, the leading researchers on flame retardants, PBDEs in breast milk. California women in the Bay Area are actually showing the highest levels of PBDE in their breast milk of anyone in the world. We discovered this quite by accident several years ago. And now we are looking, I mean, looking at what are the potential sources of this, and it turns out a lot of it is household dust -- mattresses, furniture, things in the house.

SENATOR BOWEN: Sofas.

[Laughter.]

MS. GORSEN: Yes, sofas.

CHAIRMAN PERATA: Which is why they threw it out.

[Laughter.]

MS. GORSEN: So, we are, you know, toxic substances. Now, the biomonitoring is about finding toxic substances in the human body. Of course, we've been doing toxic substances for 20 years or more, and we're looking at what are the sources. For instance, we've been testing various products because you gave us the jurisdiction to look at toxics in packaging.

Kids lunch boxes have over a thousand parts per million lead. We're looking at reducing the standard to under 200 parts per million. Why is it in these products? These products are manufactured in China. We don't know.

So, we look at increasing our role in terms of

identifying where these toxics are that are entering the human body and reducing those sources by educating the purchasers in California. Very few of these things are actually manufactured in California. We're the largest purchasers, and getting our distributors and retailors to use in their buying specs, to reduce the quantity of these materials in the products.

We think we can do a lot just by identifying, publishing information, and giving this information to retailers, that there's a strong enough environmental culture in California that most of them will start putting that in their buying specs, and we can start reducing exposures right now.

So, it's very exciting. It's a real growth area for the department. I mean, we've traditionally managed industrial waste, and now we're finding toxic substances are much more prevalent in the products that we use day to day than exposures that may come from dirt or waste that goes to a landfill.

CHAIRMAN PERATA: I think it'll probably be good for lawyers, too. Can't be all bad.

Thank you very much.

We have a motion to approve. Call the roll, please.

SECRETARY WEBB: Ashburn.

SENATOR ASHBURN: Aye.

SECRETARY WEBB: Ashburn Aye. Bowen.

SENATOR BOWEN: Aye.

SECRETARY WEBB: Bowen Aye. Cedillo.

SENATOR CEDILLO: Aye.

SECRETARY WEBB: Cedillo Aye. Battin.

SENATOR BATTIN: Aye.

SECRETARY WEBB: Battin Aye. Perata.

CHAIRMAN PERATA: Aye.

SECRETARY WEBB: Perata Aye. Five to zero.

CHAIRMAN PERATA: Five-zero, congratulations.

MS. GORSEN: Thank you, Senators.

[Thereupon this portion of the Senate Rules Committee hearing was terminated at approximately 3:00 P.M.]

--coOoo--

CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of August, 2006.

Evelyn J. Mizak

EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as the Executive Officer of the Franchise Tax Board?

I will greatly value the opportunity to lead the Franchise Tax Board into the future. I am a tax lawyer by training, and I love public service. I can promise you diligence and hard work in leading the dedicated state employees, who make up the FTB. My goals are to make the FTB more transparent and to provide excellent customer service while fairly and effectively administering the state's tax laws. Let me outline what I hope to accomplish.

The FTB is widely regarded throughout the nation as a premier state tax administration department. It is my intent to maintain our reputation for excellence and to build upon it.

I will maintain and strengthen the FTB's core capabilities and capacities as we face future challenges. The FTB must fulfill its core statutory mission to fairly and effectively collect the correct amount of tax from our taxpayers as the public and the law demands no less. But we must do so expeditiously and fairly, and not as a faceless, heartless bureaucracy.

Taxes are complicated and pretty much disliked by most people. My goal is to make the tax system accessible and easy to navigate. To do this, we need to be focused on better taxpayer service and transparency. Transparency means allowing citizens to see openly and participate in the activities of their government. It means making our information and processes more accessible and understandable to taxpayers.

Excellence in customer service puts a face and heart into a bureaucracy. Taxpayer burden is defined as the amount of time and money taxpayers spend to comply with their tax obligations. To help reduce this burden, corporate and individual taxpayers deserve to get the help they need to comply with their tax filing and payment obligations.

In that regard, I foresee increasing our outreach and education programs to underserved communities. This includes providing tax information in other languages to better meet the needs of our non-English speaking taxpayers. Our Speakers' Bureau will continue to make presentations to small businesses educating them on their tax filing responsibilities. I also intend to put greater emphasis on electronic commerce including tax filing, refunds, payments, and more.

The taxpaying public must be confident that the tax system is both equitable and fair in who pays and how much. In this regard I have already worked with my advisory board, comprised of tax professionals from practitioners, corporate tax professionals, and the academic community. California is faced with an annual tax gap conservatively estimated to be $6.5 billion. The tax gap is the difference between what is owed and what is paid. Besides increasing enforcement to collect these taxes, we must demonstrate to the public that tax scofflaws will be held accountable and that honest taxpayers are not shouldering an extra burden to compensate for those who cheat.

The reasons for the tax gap are quite varied. This covers a wide-ranging universe, from tax protestors to abusive tax shelter promoters. The tax law, like all laws, is subject to interpretation. There is intended administrative discretion in the statutes sometimes; there can be unintended ambiguity other times. This can lead to honest disputes over tax. We owe the taxpayer community an honest and reasonably expeditious audit and dispute resolution process. We are actively working to do a better job.

Tax administration must be both responsible and responsive. By that I mean the FTB must continually seek ways to improve how we do the state's business in a cost-effective manner. We must keep our information technology systems reliable and adopt the best information security practices available. I am proud to say that FTB has a strong record of achievement in building and maintaining our IT systems, e.g., personal income (TI) and business entities (BETS) tax information technology systems, our collections system, and filing enforcement systems (PASS, ARCS, and INC). These accomplishments didn't happen by accident. The FTB effectively pioneered and partnered with the private sector through performance-based procurement to realize this solid record of achievement.

I would hope that at the end of my tenure as FTB executive officer that our core capability is even greater than today, revenue goals were consistently met, and that California taxpayers feel they are getting the help and support they need, and that they believe taxes are administered in a fair and reasonable manner.

2. What is your evaluation of the strengths and weaknesses of FTB? What yardsticks have you used to evaluate them?

Strengths
When the Franchise Tax Board appointed me as executive officer, I came to an organization nationally recognized as a leader in state tax administration. In the past year, delegations from the IRS, the Federal Government Accountability Office, Andorra, Bulgaria, Canada, China, Japan, Korea, and Pakistan have come to FTB to learn about improving their own tax systems.

Even though FTB has this excellent reputation, we must continually monitor performance against meaningful yardsticks, such as:

- Inspiring confidence among taxpayers that they will receive fair, respectful treatment and that all taxpayers pay no more and no less than their legal share of taxes.
- Making it as easy as possible for taxpayers to correctly self-report and easily pay their tax liabilities through e-services.
- Wisely using tax dollars to efficiently and correctly process tax returns.
- Protecting the private taxpayer information entrusted to us.

FTB has significant strengths when measured against each of these yardsticks:

Inspiring confidence – The goal of ensuring fair, respectful treatment of taxpayers and their representatives underlies all FTB operations. To treat taxpayers with respect, for example, we strive to quickly issue refunds. In 2005, we issued more than 51 percent of individuals' refunds in five days and more than 81 percent within 25 days. In addition, we strive to provide the quality customer service that taxpayers who fund state operations deserve to assist them in fulfilling their tax obligations. Our staff who respond directly to taxpayers are trained to a high standard of customer service. Staff who make decisions about auditing or collecting receive thorough training in applicable law. Taxpayers who believe that we have not made fair or appropriate decisions regarding their accounts, can turn to our Taxpayer Advocate for help. In 2005, less than one percent of California's personal and corporation filers contacted the Taxpayer Advocate. Most of those contacts required more explanation to the taxpayer, but not a reversal of FTB decisions.

To have confidence in our tax administration, taxpayers also expect us to take appropriate action to discover those who do not pay their full share of taxes. We have several programs to detect and ensure payment from those who do not pay their share including our ongoing Audit, Filing Enforcement, and Collection programs. We have had several recent successes in obtaining payments from people who had not paid their full tax obligation, including the abusive tax shelter Voluntary Compliance Initiative, the recent California Shelter Resolution Initiative, and the Tax Amnesty Program. These programs brought thousands of taxpayers into compliance and contributed beyond expectations to funding state services while not intruding on taxpayers who reported and paid their full tax obligations on time.

Easier reporting and paying – California's diverse population includes people from many cultures and languages, many age groups, wage earners, business owners, independent contractors, and more. Each type of taxpayer has different issues and thus different needs for the kind of tax system that can reduce burden for them.

We make it a priority to offer many options for filing, paying, and obtaining tax information. In 2005, 5.6 million returns were downloaded from the Internet, 6.5 million taxpayers filed using paper forms, and 8.2 filed electronically.

We try to ensure that most taxpayers can use the simplest possible tax forms. Last year, nearly 2 million filers used our simplest tax form, the 540-2EZ.

We offer secure, online payments using credit cards, as well as installment agreements that allow payments over time when taxpayers cannot pay in full. We also offer many different channels for accessing tax information.

In 2005, we answered 1.3 million questions over the phone and other taxpayers used our automated call options. We had 6.2 million visits to our Website.

Wisely using tax dollars – Our core function is processing more than 14 million personal and corporation tax returns and properly accounting for the liabilities and payments. Income taxes make up more than 60 percent of the state's general fund. Our costs for processing returns are less than 0.36 percent of revenue collected. In discretionary enforcement activities, our revenue per dollar spent in fiscal year 2004-2005 was: $12 for audits, $20 for collecting delinquent payments, and $45 for filing compliance. We work well with those who require tax statistics and information for managing the California's budget and for adopting tax policy such as Legislative committees, the Legislative Analyst's Office, and the Governor's Department of Finance. The Department of Finance, in particular, finds that our ability to process tax returns fast and collect information about tax receipts is very helpful to them.

Protecting the taxpayer information entrusted to us – We take the utmost precautions in protecting the highly sensitive information taxpayers share with us. We use state-of-the-art technology to ensure our data remains secure. We are constantly vigilant against intruders who might attempt to steal or compromise our data.

We have achieved these strengths by cultivating internal strengths, in particular:

- The ability to design and implement effective automated systems – We understand the importance of creating and maintaining an enterprise approach to technology planning, resource allocation, and IT implementation as we move forward. Aggressively seeking innovative IT solutions has helped us to significantly upgrade our IT applications and infrastructure in nearly every area of the department. For example, systems such as the Accounts Receivable Automated System and the Integrated Nonfiler Compliance System have succeeded in bringing in more revenue, encouraging compliance while increasing customer service, and causing less intrusion for taxpayers.

- Our strategic planning capability has allowed quick and successful response to the changing business and technological environment. With strategic planning, we match resources to priorities and have more tightly integrated strategic planning with IT and budgetary and resource planning. This helps ensure that our business needs drive our technology solutions, and resource needs and availability are considered in a holistic manner, allowing us to implement solutions based on our resources.
- Our efforts to transform the way we do business are evident in our recent business process reengineering initiatives. These initiatives are broad in scope and demonstrate the department's commitment to transformation while retaining the elements that have made us a leader in tax administration.

Weaknesses

While we have so many strengths, it is also important to identify the areas where we could improve upon the services we provide to California taxpayers. If we do not constantly strive for improvement, we will not attain our goal of excellent service. In that regard I hope to develop an organization that is even more responsive, cost effective, and efficient. In particular, I wish to focus on:

- *Proactively seeking more input from taxpayers, tax professionals, and other stakeholders in the tax system to find out how we can better meet their needs.* – Although FTB conducts outreach and education programs, we need to do more to better serve taxpayers, especially considering how diverse California is. Through our education and outreach efforts we need to find out what taxpayers and practitioners want and need to help them comply with their tax obligations. We have plans to gain this input through meetings with groups representing various stakeholders, surveys, and focus groups. We are increasing the number of FTB publications in foreign languages. And, we are exploring ways to measure the effectiveness of our outreach and customer service efforts on tax compliance.

- *Improve transparency* – (Refer to answer #13 on transparency.)

- *Ensure a high-quality, capable workforce* – Our changing demographics and the likelihood of a high number of retirements in the near future have resulted in increased difficulty in attracting, developing, and retaining a high-quality workforce. We face a difficult challenge in recruiting and retaining auditors. Based on a 2006 Department of Personnel Administration survey, tax auditor starting salaries are 7.6 percent below the median auditor salary statewide, with discrepancies ranging from 12.7 to 17.1 percent in the Los Angeles and San Francisco regions. Combined with the attention on California's budget difficulties, this discrepancy causes candidates to no longer look at the state as a preferred employer. At the same time, our attrition rate for experienced auditors has grown to 200 percent of tax auditors with three-five years of experience leaving FTB. We have started a multi-faceted approach to deal with these challenges. We have doubled the size of our recruitment staff. We are expanding our recruiting by advertising career opportunities on the Internet. We are taking a more aggressive recruitment strategy within college classrooms. We are working to increase our upward mobility efforts.

- To address our high retirement rates, we are working with the Department of Personnel Administration to develop a statewide succession-planning model that will be shared with all state departments. We also have a master services agreement to enable state agencies to contract for succession planning services. Internally, we are furthering our efforts to build a strong organization and invest in FTB employees as the managers of the future through a comprehensive Management Development Program.

- *Maintain the technology environment essential for continuing to lead in the delivery of efficient and effective customer service, return processing, and other functions.* – The current budget environment hampers our ability to adequately plan and implement its business and technology future. However, we are focusing on automating services where possible. For fiscal year 2005-2006, FTB sustained an unallocated budget cut of $7.8 million. In the current year, the budget reduction is being managed by deferring operating expenses purchases, identifying one-time contract savings, ongoing lease savings from field office closures, and other operating expenses expenditure reductions.

I am confident that with these strengths, and the above improvements in areas that need attention, the FTB will continue to be an organization nationally recognized as a leader in state tax administration.

3. How do you balance the needs, interests, and directives from the three-member board with the myriad of other interests including those of taxpayers, the administration, your executive team, and the Legislature? How do you reconcile FTB's objectives of customer service and tax enforcement as a revenue agency?

I think balancing the needs, interests, and directives of the three-member Franchise Tax Board with taxpayers' interests, Legislative interests, the administration's interests, and my executive management team will be a sizeable part of the job ahead. It's a challenge.

I welcome the challenge of meeting the needs of these interested parties. I think being taxpayer focused so as to be fair and effective toward the end goal of collecting the correct amount of tax from taxpayers is a common, shared purpose. At the same time, I am not naïve in thinking that reconciling these interests always will be clear, simple, or easy.

My first objective is to maintain the operational effectiveness of FTB's core function - which is to administer the state's personal and corporate income tax programs. As you know, these programs contribute more to the state's general fund than any other single source. In that regard, my desire is to build on the strong organization I have inherited.

Looking to the future, there are changes in the nature of our economy and the importance of making California the destination location for emerging industries and businesses, including biotechnology and nanotechnology, while at the same time maintaining the strength of our strong existing electronics and manufacturing industries, the entertainment industry, and agriculture. We are becoming an economy driven by intangible, intellectual property products where value and income is derived from that component more often than the tangible product itself, for example, iTunes, pharmaceuticals, software, and microchips. The tax code and regulations need to keep up with these realities to provide guidance and certainty.

In that regard, I see the importance of providing customer service to meet the reasonable expectations of these important industries in tax administration. We should be clear in our tax policy and straightforward in our administration, and provide certainty and efficient case processing of all disputes. We should do things timely and be transparent in interpretations of the tax law.

Balancing competing needs can also be achieved by looking for common purpose. For the vast majority of California taxpayers, we need to assure efficiency and fairness in our administration of the income tax programs. Efficiency means continuing to provide more electronic Web-based self-help services. It means providing the means for individual taxpayers to complete their filing obligations as they choose. That includes electronic as well as paper, and directly with FTB as well as indirectly through private third parties.

Clearly we need to do a better job at reaching out to minority communities to better serve their needs through outreach to their communities. I will continue to use the Executive Officer's advisory board that my predecessor Gerald H. Goldberg established to provide valuable feedback on these matters. We have already met once, and I am pleased and fortunate to say that my general vision was well received.

We are the tax collector. And a great asset and strength we have is that we are a nationally recognized leader in state tax policy and administration. We are effective in meeting our revenue targets to help keep the state budget on track. We work well with the institutions that require tax statistics and information in formulating and adopting tax policy. Including the Legislative Analyst's Office, the tax committees, the budget committees, and the Governor's Department of Finance.

All agencies can seek improvement, and if they don't strive for it, they stagnate. In that regard I hope to develop an organization that is even more cost-effective, responsive, and efficient. I value state employees and think they should be given the tools to do their work.

As you know, we report to the three-member Franchise Tax Board. It is my desire to assure the Board that their policy-making role is implemented throughout the organization. We also report administratively through the State and Consumer Services Agency. They approve our budget, and oversee the administrative side of FTB. I will strive to assure that those lines of responsibility are satisfied as we do the public's business.

One of my fundamental operating principles is "Whatever the cost of putting a thing right, it can never be more than the cost of leaving it wrong."

4. As the administrator of one of the larger departments in state government with 5,500 employees, what managerial approaches do you plan to use to optimize employee performance? Given the increasing number of state employees who have reached retirement age, what steps has FTB taken to ensure the quality of management and service for which FTB is noted?

I understand the importance of optimizing employee performance as a means of achieving organizational excellence. I also understand that there is a connection between employee performance and employee engagement. To serve California taxpayers in the most effective and efficient manner possible, we must create the conditions where employees are engaged and their attitudes and behaviors reflect a desire to excel. Our Executive Management Team has recently defined employee engagement as follows:

> "Employee engagement is present when employees are treated with dignity and respect and can connect their work to the organization's mission and key strategies. The work environment is one where inclusion is fostered and each employee believes they make a difference in our business. All employees have the tools they need to do their job (including e-employee FTB Net improvements), are achieving their career objectives, and have confidence in FTB's leadership."

Employee engagement is one of five key departmental initiatives at the FTB for 2006. As executive officer, I intend to continue providing my support to this initiative and all associated departmental efforts. I also recognize that it is my responsibility to serve as an "engaged" role model in my leadership position. In that regard, I will challenge my leadership team with meaningful and specific goals that demand the full use of their skills and abilities. I will acknowledge associated accomplishments and provide open, honest feedback to foster opportunities for personal growth and development. I will practice our core management competencies that we teach our young managers, and I will "walk the talk" of our organizational values. In pursuing my own personal potential, I will use every opportunity to learn from the outstanding people that surround me here at the FTB.

Our employee engagement efforts will also translate into employee retention since by definition an "engaged" employee is a "satisfied" employee. There is, however, much more that the FTB has done and is continuing to do to ensure that we have the employees with the knowledge, skills, and abilities needed to get the job done right and achieve our organizational vision of excellence.

The FTB realized several years ago that it would face the same potential loss of talent due to retirements that was anticipated for most government organizations. As such, we have taken many proactive steps to prepare for the anticipated loss of human resources.

We are currently formalizing our workforce planning efforts by analyzing all of our individual efforts in the context of overall current and future departmental needs. One of our most noteworthy efforts is the ongoing development and testing of a new workforce-planning model that could serve as a repeatable process for each of our program areas. In creating this new model, staff has paid close attention to the Department of Personnel Administration's new California workforce planning model and associated resources. We are one of only two departments that have staff working directly with the DPA and the State Personnel Board on the development of a statewide master service agreement that will help all agencies identify external consultants to help with workforce planning.

Other notable steps we have taken to ensure the quality of our current and future management and services includes:

- Visited other organizations to identify best practices in workforce planning and other organizational development topics.
- Established an ongoing robust internal Management Development Program – recently revised to include a coaching component to help facilitate knowledge transfer.
- Created quarterly "99-Minute Supervisor Workshops" where supervisors and managers receive education on "hot topics."
- Implemented a reoccurring enterprise-wide management rotation process to help broaden the perspective and experience of the entire management team.
- Conducted exam panel debrief sessions to determine strengths and weaknesses of overall exam candidate pools.
- Participated in a statewide IT succession-planning effort associated with a large project within the IT Managers Academy.
- Developed a survey for retiring FTB employees to determine their interest in being placed in a retired annuitant hiring pool for hiring managers to consider when needing certain talents.
- Created a department recruitment team to consolidate all of our program recruitment skills and abilities to achieve efficiencies and maximize departmental recruiting strategies.
- Analyzed the department's hiring process as part of a reengineering effort aimed at finding efficiencies in filling key vacancies.
- Scheduled a large education fair to provide employees a chance to identify ways to achieve personal and professional development.

5. Do you believe that FTB should make a significant investment in e-filing? What are the pros and cons of the state absorbing e-file transmission fees currently paid by taxpayers?

FTB has already made a significant investment in e-file, and should continue to invest and implement e-file options that make good business sense and allow taxpayers to easily conduct business with us. E-file was and is a key strategic element of our filing program due to the savings that it brings to our tax return processing areas. These processing savings currently equate to $1 per return. This year, for example, we have received nearly 8.4 million e-filed returns. That is a considerable savings, in this year alone, for the state.

With the passage of the mandatory e-file law in 2004, the number of electronically-filed returns almost doubled; and now e-filed returns account for approximately 60 percent of all the individual returns filed this year. By 2010, we expect that number to grow to 70 percent. Nearly 40,000 tax practitioners nationwide and more than 30 commercial tax preparation companies, including *Intuit* and *H & R Block*, participate in our e-file program.

With the IRS and other states promoting and continually expanding e-file options, it is important that we continue to do the same. In response to the IRS mandating e-file for certain corporations, we expanded e-file program to include corporations. And, we are further expanding the program to allow partnerships and limited liability companies to e-file beginning in January 2007.

We have long been seen as an innovator and leader in e-government, and it is important that we strive to maintain this status by making sure we continue to invest wisely and prudently in e-file.

Describing the pros and cons of the state absorbing e-file transmission fees currently paid by taxpayers is a question we, as well as many other states and the IRS, have discussed over the years. However, the debate has not been as visible in recent years as more taxpayers and practitioners embrace e-file as the preferred filing method.

The primary reason for the state to absorb any transmission fees is the potential for an increase in e-filed returns. However, there is no guarantee that this would occur. Additionally, some online tax preparation companies charge only for the preparation of a return, and there is no separate charge for e-filing it. Other companies offer free e-file with the IRS, but charge a fee to transmit the return to the taxpayer's state of residence.

As for tax practitioners, in recent years, especially with mandatory e-file, many of them have told us they don't charge separately for e-file, and said that it's just part of doing business. In fact, some have told us since they've made their office an "e-file office," they actually charge an additional fee for taxpayers who want to file a paper return.

The primary reason for the state not absorbing transmission fees is that FTB would lose the processing savings we realize when a return is e-filed. As I've stated, these processing savings currently equate to $1 per return. If we absorb or subsidize transmission fees, this savings would be considerably reduced or even lost.

6. To what extent do you think FTB should be involved in state sponsored e-filing? For example, should FTB calculate part of the tax return?

I believe in the direction set forth by the three-member Franchise Tax Board at its November 26, 2002, meeting. In response to taxpayer requests, at this meeting, the Board directed us to make forms 540 2EZ, 540A, and 540, including those with schedules or a federal 1040 to be attached, available for free, direct electronic filing for the 2002 tax year filing season, or as soon as possible thereafter. Based on the Board's direction, *CalFile* was established.

CalFile is FTB's free, direct, online e-file application. Our objective in deploying *CalFile* was to provide a free taxpayer-to-government e-file opportunity. Currently, *CalFile* provides the functionality to create and e-file all returns meeting the criteria for the 540 2EZ, 540A, and a limited number of 540 filers. Approximately 6 million returns are eligible for *CalFile*.

CalFile serves taxpayers:

- Who don't need the services of a tax professional.
- Who don't want or need to purchase tax preparation software.
- Who believe they shouldn't have to share their tax information with someone other than the government.

CalFile does calculate part of the return, but it's a "formless" approach for tax return filing. In other words, taxpayers don't need to worry about selecting the proper tax form. On a screen-by-screen basis, generally divided by subject matter (name/address, dependents, income, expenses, etc.), taxpayers use a combination of check boxes and data fields to enter their tax return information. Based on the information entered by the taxpayer, *CalFile* performs math computations and computes the taxpayer's tax liability, and whether they are due a refund or owe additional tax. However, *CalFile* does not provide tax advice.

I believe the current functionality provided by *CalFile*, including math computations and calculating the tax liability, is something the state should provide. While tax preparation software and tax practitioners are an invaluable part of the tax filing process, not all taxpayers need tax software or tax preparation advice to prepare their returns, nor do they want to share their personal tax information with a third-party. Without *CalFile*, many taxpayers would not have the option of e-filing their tax return for free, and would, instead, have to pay to have a third party act as transmitter of their private tax return data.

It is difficult to say the extent we should be involved in state sponsored e-filing. I think it would be short-sighted of me to say that we have done all that we should in relation to state sponsored e-file. We need to be aware of changes in technology and customer needs, and be willing to adapt and adopt appropriately. What we now offer in relation to state sponsored e-file may be sufficient for many years to come, however, it may not. As a leader in innovation and e-government, we must be sensitive to our taxpayers' needs and make decisions that are best for them as well as the state.

7. Please describe how you would make taxpayer information accessible to taxpayers, but also protect their privacy?

Taxpayers want the ability to access information on their own terms, when and where they need it. Whether the request is for the tools to check their balance due prior to sending a payment, arrange for monthly installment payments, or file their tax returns electronically; we want to fulfill those requests. We also recognize the importance of remaining focused on diligent security procedures. Taxpayers are confident we will carefully protect their information and we will continue to build our existing programs, and implement new programs to do just that.

An important strategic goal for FTB is to allow taxpayers even more access to their records and personal information, balanced with the critical need for protection of their privacy.

Central to taxpayers continuing to access their information electronically is the expectation that we will treat their personal information with the utmost care. My information security program provides the oversight and in concert with the entire staff the continuous improvement needed to fulfill that commitment. Our networks and databases are secure, and our employees have the integrity, expertise, and training to ensure that taxpayer data remains confidential. Our information security program works closely with departmental, state, and national experts to improve our overall security efforts.

Personal privacy is a significant public concern with weekly news reports raising public fear levels regarding breeches of computer security in both private and public sectors. In a rapidly changing technological world with escalating security threats, FTB goes to great lengths to preserve the protection of taxpayers' data.

We have an aggressive educational outreach program for employees. My Information Security staff monitors our computer systems continuously for unauthorized access to, or acquisition of, confidential data. All employees receive annual training in the latest policy and procedures for safeguarding private information.

A robust computer and worksite security program is dedicated to preserving the public's trust in state government's management of confidential taxpayer data. We follow a "defense in depth" security strategy with adherence to best practices from the government and private industry.

8. FTB has long been considered one of the most technologically advanced and efficient departments in state government. Please describe the ways in which you might continue to improve the information technology at FTB and increase its efficiency for taxpayers.

Global competition, increased federal and state government initiatives, and customer service needs will inevitably push us into new technologies and a demand for increased efficiencies. We must continually seek to improve our information technology systems. I am committed to maintaining our leadership in state government in our use of technology to serve the public and the state. I strongly believe that IT should be the driver to solve our business problems.

My opinion on our success in the IT arena starts with having a plan—our departmental strategic plan. The FTB has been developing strategic plans since the mid-1980s, and I plan to continue this effort. Under my direction, our management team has recently begun to update our strategic plan.

I will ensure that we make decisions from the perspective of what is best for the taxpaying public. This leads to technology efforts that solve business problems.

The FTB's IT reputation is due to our technical skills, imagination, and innovative ways to see what is possible with *Innovation* as one of our core values. I am committed to hiring, rewarding, training, and challenging talented staff to continue this reputation.

9. Do you believe FTB has lessons learned or best practices that could be used in other state IT projects?

Absolutely.

In fact, the Federation of Tax Administrators, a nonprofit organization comprised of the tax and revenue departments of the 50 states, the District of Columbia, and New York City, and whose mission is to improve the standards and methods of tax administration, recently presented the FTB with their 2006 *Leon Rothenberg Award* in the category of "Innovation."

To be recognized by peers in tax administration as "innovative" is indeed an honor. It is no wonder we are regularly contacted by other state agencies, tax departments, and other countries to discuss IT efforts, lessons learned, and best practices.

The FTB pioneered the Alternative Procurement approach for IT efforts.

We are partnering with the Department of Child Support Services in the California Child Support Automation System project. This is the largest IT project in the state's history and we are gaining valuable knowledge on how to conduct such large projects. This knowledge will be invaluable to the state and us when future IT projects present themselves.

The sharing of acquired IT knowledge should not be a new idea. We owe it to the taxpayers to operate the most efficient government we can. If FTB can learn from other's experiences, or if our knowledge can aide another agency, then by all means we should share our knowledge, experiences, talents, and skills.

To that end, I'm working closely with our agency to share our best practices, and our CIO is part of the State Portal Steering Committee and works closely with the state's CIO, Clark Kelso.

10. As you know, there has been some desire to expedite the protest process at FTB. How would you reconcile this desire of the business community with obligation of FTB as a revenue agency?

There is a strong desire on my part, too, to expedite the audit, protest, and appeal timeframes.

The controversy surrounding protest processing in recent years has involved protest cases of Fortune 500 companies and high net worth individuals. They comprise only one percent of the protest inventory, but are very important because they tend to involve the most complex issues and highest tax assessments. Six years ago, these cases closed in an average of 48 months, which everyone agreed was unacceptable. So FTB set out to cut the run-time of these protests to 33 months. The challenge was to cut total run-time without sacrificing thoroughness of review. We added more staff and tightened the case management processes.

Since 2003, these cases have closed in an average of 31 months, a 30 percent drop in processing time since 2001. And during this time the revenue sustained rate has not varied more than one percent from the 50 percent historical sustained rate. This indicates to us that we are finishing the cases in less time but with the same thoroughness.

Industry and others have indicated they would like the protest process to be even shorter, and we are re-engineering our protest processes to further eliminate delays. Our goal is to cut processing time another 30 percent, to a maximum of 24 months.

Clearly, we must strike a balance between expeditious case completion and thoroughness of review. I am committed to finding creative approaches to this issue. We will look at what other states do to cut processing time. We must remember that both taxpayers and the FTB have a common goal in the protest process: determine the *correct* amount of tax. Greater cooperation between taxpayers and the FTB will go a long way toward achieving this common goal.

In some cases, expeditious processing of a protest is the single most important thing to a taxpayer. The FTB is considering a pilot program to expedite the protest process. Not all cases will be eligible and we contemplate that a taxpayer wishing to participate will accept certain conditions, such as limiting the issues raised and agreeing to respond quickly to information requests. We believe there will be taxpayers who will agree to these conditions if it means a speedy resolution of their protest, and we are committed to accommodating them.

At the same time, we know quicker is not always better. Fraud and abuse are difficult to ferret out of today's sophisticated abusive tax schemes. Unscrupulous promoters of these schemes should take notice that the FTB will expend the necessary resources and take the time needed to protect the public's interest.

While we are on the topic of tax controversy processes, it is appropriate to ask why are there so many tax controversies to begin with? My belief is that the FTB must do more to educate the public about the tax laws and improve the clarity of those laws. Our voluntary income tax system is based on self-compliance, and the FTB's administration of the income tax laws must include measures that promote self-compliance. Interdiction will always be a necessary element of the FTB's tax administration, but we can diminish its need if we help taxpayers to file correctly in the first place.

11. Are you contemplating proposing any changes in the way in which you audit residency returns?

We are always looking for ways to improve the quality of our products and services.

I firmly believe that the FTB should make the tax system as least intrusive as possible for all of our taxpayers. Admittedly, residency audits are time-consuming, fact-intensive, and very inquisitive audits by nature. However, recent changes to the way we conduct residency audits have made the process somewhat more objective and a little less painful.

During the past year, the FTB has greatly stepped-up its education and outreach efforts toward the tax professionals who have to cope with these complex audits. We have increased our attendance at seminars and speaking engagements for tax attorneys, CPAs, and enrolled agents to better explain the requirements of the Revenue and Taxation Code regarding residency and sourcing issues.

To provide you with some background: We conduct residency audits to determine whether a taxpayer is:

- A resident of California – taxed on income from all sources, including income from sources outside of California.
- A nonresident of California – taxed only on income from California sources.
- A part-year resident – taxed on all income received while a resident, and only income from California sources while a nonresident.

Our purpose is to verify the correct amount of tax in a fair and impartial manner.

An individual's place of residence is the place to which they have the "closest connections." Determining where a person has the "closest connections" is a very fact-intensive process and can be viewed as intrusive since it looks at all aspects of the taxpayer's lifestyle, not just business or tax matters. We must establish what connections are uniquely important to each taxpayer and where those connections are located. Residency is not determined by one or two bright line facts, but rather a totality of all connections.

Regarding residency audits, I am not proposing any change to this fundamental process as that is what is required to properly apply the California statutes. However, please note that we have recently instituted the following measures:

- We are doing extensive background research using public information and government records to assess whether taxpayers may have a residency issue prior to contacting them. We use a database program to help us objectively evaluate whether preliminary evidence indicates a residency audit is warranted. This has reduced the number of unnecessary contacts.

- We devote time listening to the taxpayer and gaining an understanding of their lifestyle and what their important connections are, regardless of where located. This allows us to be more focused in our requests for corroborating documentation.
- We accept declarations and affidavits provided by taxpayers and third parties. Again, this has helped us to be more focused in our requests and allowed the audits to be conducted in a timelier manner.
- Auditors provide taxpayers with the option to authorize the FTB to obtain documents on their behalf. This can reduce the burden on the taxpayer.
- To help protect a taxpayer's privacy, we have implemented a policy of requesting documentation directly from the taxpayer first, before going to third party non-governmental sources.
- We are committed to developing all the facts at the lowest possible level and resolving any disputes in fact, or application of law, during the audit rather than in the protest, appeal, or litigation arenas.

Streamlining the fact gathering process and customizing each residency audit to the individual taxpayer's situation requires a partnership between the taxpayer and the auditor. And it is in this area that I foresee continuous improvement in the residency audit program in the future.

A less adversarial spirit is my goal in reaching out to taxpayers and their representatives in assisting them to self-comply.

12. Do you think FTB should have the right to appeal BOE decisions? Why or why not?

In my general statement of goals, I noted that the tax laws are no different than other laws. Sometimes agency administrative discretion is deliberately designed into the statutory scheme to fill out detail, or, other times, regulatory action is appropriate to resolve ambiguity or provide guidance and rules. And, of course, with well-advised taxpayers, honest tax disputes arise between the FTB and taxpayers over tax laws, regulations, rulings, audit findings, or disputes over facts and circumstances in particular instances.

The issue of whether FTB should be granted a specific statutory right to appeal adverse BOE decisions to court is fundamentally a public policy matter. It would require legislation to provide a specific remedy for FTB to go to court following an adverse BOE decision on a trial de novo, for instance. Nothing in the law prohibits it, but nothing permits it currently. The only avenue procedurally available currently, according to my legal staff, is an extraordinary writ proceeding against the Board of Equalization. This has never been done. Obviously, it is troublesome for one state agency to sue another state agency. In addition, two of the three-member Franchise Tax Board serve on the Board of Equalization.

In this context, one aspect of California's administrative tax dispute resolution process is foundational to the policy discussion of whether FTB should be allowed explicit statutory authority to appeal BOE decisions. That foundational fact is this - if a taxpayer wins at any administrative level currently, that matter is resolved unless it ends up in court on some other issue. If the taxpayer is convincing to the auditor, or to the FTB's protest hearing officer, or to the State Board of Equalization on appeal, then that decision for all practical purposes ends the matter today. The BOE is the final administrative appeal body. It is an elected body.

As a practical matter, FTB does not take adverse administrative level decisions to court. Consequently, only when a taxpayer loses at the BOE does the case get to court. So how does tax administration provide for uniform results and outcomes consistent with the statutes at the administrative level? Tax administrative appeal decisions set rules which may readily create winners and losers based on particular taxpayers circumstances.

For example, those disputes may involve corporate unitary apportionment under UDITPA, or determinations of business or non-business income for apportionment and allocation rules where millions of general fund dollars turn on the answer for different groups of taxpayers. If an appeal denotes facts of first impression or a change in existing law, then the BOE publishes those decisions which have precedential value. Once published, those formal opinions provide guidance as to the uniform application of some tax law rules. The lack of an appeal to the courts by FTB, not as a legal matter because there is an argument on that, but as a practical matter, may not always promote uniform outcomes for tax disputes arising out of the same tax laws.

FTB, when faced with uncertainty in administering the tax laws, does not "set up" both sides of a controversial or unresolved tax law issue. Instead, it is FTB's policy, consistent with our mission and values, to determine what we consider the correct application of the tax law. We then audit and pursue cases defending that interpretation. It is reasonable to vest a statutory right in us, subject to three-member board approval, a right for the first line administrative agency to obtain a court determination on whether its statutory construction is correct. Our staff's position is that the law currently allows for review of an adverse BOE decision by a writ of administrative mandamus.

Without quarreling with our current structure as a practical matter, it does raise legitimate questions for the tax administrating agency. Our obligation to provide fairness in tax administration runs to all taxpayers. Article III, Section 3.5 of the California Constitution requires that all state agencies continue to enforce statutes and regulations until a Court of Appeal holds it unconstitutional. The BOE regularly declines to decide constitutional issues for that reason. Article III, Section 3.5, however, seems to acknowledge that while the superior courts of this state have initial jurisdiction to decide these constitutional tax questions, one trial court judge's decision isn't enough to alter the taxing scheme until there is a final appellate court decision. In that context, when the constitutionality of tax matters is litigated, we have the statutory right to appeal an adverse trial court decision, which is approved by the three-member Board itself. Interpretation of tax statutes, however, do not allow specifically for the same three-member Board to appeal adverse BOE decisions to court.

In conclusion, we may have a right to go to court currently on an extraordinary writ. We have never done so. The question is a public policy matter for the Board, the Legislature, and the Governor to decide whether, as a matter of good public policy and tax administration, it would be preferable to provide in statute for a different kind of judicial review of BOE decisions.

13. In previous statements, you have spoken about the need for "transparency." Please describe what you mean.

I view transparency as the process that allows citizens to see openly and participate in the activities of their government. It means making our information and processes more accessible and understandable to taxpayers. It should be easy for ordinary citizens to request and receive documents and information from us, collaborate with us, and provide input into decisions, policy, and rule making.

One of the desired outcomes of transparency is that it creates citizen participation in government processes. At the highest level, this translates to participating in our political processes to strengthen democracy. For FTB specifically, this participation translates to taxpayer self-compliance with tax law. We also recognize that our taxpayers have a much higher expectation of government then they did in the past. If we want taxpayers to interact with us and comply with tax laws, the taxpayers need to have a high level of trust in us. Transparency is a key component in building that trust between government and citizens.

Customer service is also a key component of transparency. By providing taxpayers with the information, tools, and resources they need, we can help them understand and comply with their tax obligations. It should be straightforward for taxpayers to determine what they owe so they can easily pay the appropriate amount of tax due. We have already done a great deal to improve customer service through technology, including the following:

- Added a significant amount of new content and online services to our public Website.
- Taxpayers can go online to file their taxes, get information on their accounts, make payments, or request installment agreements.
- Business entities may now e-file. Most corporations don't have to send tax forms in archive boxes unless they want to.

Also, transparency must extend to taxpayers who do not speak English as their first language. We plan to do much more outreach and education to multicultural communities, including increasing our foreign language publications. We recently translated our more high profile and most often downloaded publications into Chinese, Korean, Spanish, and Vietnamese. We will continue to increase the number of forms and services we provide for our non-English speaking customers.

Transparency also requires gathering more feedback from taxpayers and the tax professional community to improve our services and systems, and to further build trust. I intend to conduct more outreach to taxpayers and professionals to find out how they perceive us and what they need from us to help them comply with their tax obligations. It is important to establish and maintain these open lines of communication, and I will continue talking with taxpayers and tax professionals around the state and getting their input.

We view the Internet as the most efficient channel for providing transparency and access for taxpayers. Some of the major elements of making transparency a reality include:

- Posted FTB administrative structure and senior management contact information.
- Provided more information on high-profile topics such as the Voluntary Compliance Initiative, tax shelters, innocent spouse, limited liability company protective claims, and the tax gap.
- Included more legal information so tax professionals can determine the applicable law. This includes Chief Counsel Rulings, and Information Letters, Litigation Roster (high-profile cases), Law Summaries, and an expanded and updated Directory of Legal Personnel.
- Posted more tax season-related information: post-filing season updates to the homepage, and Volunteer Income Tax Assistance information.
- Included more collections-related content and reporting.
- Posted additional information from or about other government agencies.

To me, transparency is a foundation of good government. It will allow us to have an honest dialogue about what we should be doing on behalf of California taxpayers. I am confident that increased transparency and information sharing will strengthen the relationship between FTB and taxpayers.

14. How would you balance the needs of open government vs. protecting taxpayer information?

Open government increases the public's trust that our decision-making is transparent and we are not hiding anything from them. I am personally committed to the principles of open government, including open meetings, and providing more information on our Internet site about how we do business.

As I have stated in my transparency answer, we have provided the departmental Chief Counsel Rulings on our Website, and responded to the Governor's recent Executive Order by providing more public access to our records, and procedures for how to obtain them.

In addition, the Public Records Act provides that access to information concerning the conduct of the people's business is a fundamental and necessary right to every person in this state. We have a centralized staff of specialists who respond to Public Records Act requests providing timely and consistent answers. The responses are carefully compiled, with thorough review and diligent attention to applying only appropriate and necessary exemptions when withholding information.

In summary, the increased transparency of open government combined with our vigilant safeguards for the privacy of taxpayer records builds the public trust. Public trust is vital to our system of voluntary self-assessed tax programs, an important cornerstone of tax administration in our state and nation. I will strive to strengthen the public's trust in FTB.

15. What are your views on the tax court? What are your views on the legal precedents from cases heard at BOE as they relate to the FTB?

Created in 1879 by a constitutional amendment, the BOE was initially charged with responsibility for ensuring that county property tax assessment practices were equal and uniform throughout the state. The BOE currently serves as the appellate administrative forum for California taxpayers. The BOE has been the administrative appellate agency for Bank and corporation tax since 1929 and the Personal Income Tax since 1935.

As to that issue of whether a tax court should be adopted, elected versus appointed decision-makers in tax appeals is a fundamental choice in governance. If confirmed as the executive officer of the FTB, I would not offer an opinion on this issue so that the issue can remain the exclusive purview of the policy makers.

First, in my view the Franchise Tax Board Members should be the determiner of FTB policy on such matters, not the executive director. On legislative proposals, tax program direction, and general tax policy, the three-member Board provides controlling direction. As executive officer of the FTB, I would not advocate a position regarding establishing a tax court that was not first vetted by the Board Members themselves.

Second, given the considerable history of the BOE being the appellate administrative forum for California taxpayers, it is my view that any policy change in this area should be made only after careful consideration.

Finally, it is the Legislature and the Governor who must determine such a policy change. As recently as 2004, the California Legislature did consider such a measure, AB 2472 (Wolk). This measure was held in the Assembly Appropriations committee. The Committee analysis stated "the state cost of establishing the CTC (California Tax Court) probably would be in the range of $5 million annually." A substantially similar bill, SB 1424 (Burton), was not heard in the Senate Revenue and Taxation Committee.

The FTB accepts the decisions of the BOE in individual tax appeals. If the taxpayer prevails in a final BOE decision, then that case is decided. Depending on the articulated reasoning of the BOE, and whether the decision is published, the FTB may argue the issue again. Just as in the court system, precedential decisions are sometimes reversed. If FTB places great significance on the matter, or if a decision is contrary in the FTB's view of the legislative intent behind a taxing scheme, or is contrary to the established administrative law of the state, then on a case-by-case basis a particular decision might be again presented to the BOE.

That having been said, there is no point in wasting resources when the BOE is conclusive, and to reargue the case would be fruitless. A legislative or regulatory change might be more appropriate in that circumstance. Tax credits, such as the now expired manufacturer's investment credit presented such a situation. FTB has accepted the BOE's expansive view of what qualifies as qualified property in the grocery store context, specifically bakery operations.

The FTB however, is the state agency charged by statute with administering the personal income tax and corporate franchise tax laws. It has a three-member board composed of two constitutional officers and the director of the Department of Finance. In addition, it statutorily is placed for budgetary and administrative management purposes in the State and Consumer Services Agency of the Governor's Administration.

Budget change proposals and regulations flow through those channels. In the case of regulations, they are adopted under the state's general Administrative Procedures Act procedures which includes review for cost impact by the State and Consumer Services Agency, review for legal impact by the Office of Administrative Law.

Current California law provides in general that taxpayers may appeal to the BOE after the FTB has taken the following actions: denied a taxpayer's protest of a proposed deficiency assessment; denied a refund or credit or loss claimed; or, denied a taxpayer's request for abatement of interest on a deficiency owed by the taxpayer.

BOE's determination on an appeal from an action of the FTB is final unless within 30 days of the determination the FTB or taxpayer petitions for a rehearing. In the event the petition is granted, BOE's determination becomes final 30 days after BOE issues its opinion. FTB is not specifically statutorily authorized to file a lawsuit in superior court if it loses at BOE, and has not done so on an extraordinary writ basis.

The California Constitution prohibits legal or equitable action in court to prevent or enjoin the collection of any tax. After payment of tax, an action in superior court can be brought to recover the tax paid, with interest. This payment requirement does not apply when the tax issue is the taxpayer's residency in California.

Consequently, if, the BOE rules against the taxpayer and sustains the FTB's action on a protest of a proposed assessment, then the taxpayer may bring a lawsuit in superior court against the FTB for recovery of the amount paid in a suit for refund, or, file an appeal with BOE. If BOE denies the appeal, the taxpayer may then file suit for refund against the FTB in superior court.

In any superior court litigation, the Attorney General represents the state, and the lawsuit is a trial de novo. De novo meaning trying it as if no BOE decision had been rendered, as if it had not been heard before.

Both systems are reasonable, each ultimately provides the taxpayer with a day in court. The current BOE model is a little more taxpayer friendly in that the decision makers are elected officials and not judges and therefore the taxpayers are free of the obligation to know and follow Byzantine rules of court.

16. What are you views on consolidation of the major tax agencies in this state including FTB, BOE, and EDD?

The Little Hoover Commission studied this issue several times, including as long ago as the 1950's or 60's. Most recently it was considered in the Governor's California Performance Review. CPR recommended the creation of a California Tax Commission, which would take on the functions of the FTB, the Tax Branch of EDD, and the vehicle licensing functions of the DMV. Legislation on the subject was passed by the Legislature in the mid-1990's and it was vetoed by then Governor Pete Wilson. Governor Wilson's veto message noted that a consolidation outside the executive branch per se raised concern over the administration of tax programs which together bring in the lion's share of general fund revenue. For that reason, and others, it seems unlikely that a political common ground exists where there are no losers, but only winners.

There are several issues I see relevant to the discussion of consolidation -- governance, operational efficiency, and technology.

The governance question is first and foremost a political one. There are various interests that contributed historically to the creation and preservation of the system we have today.

The Governor, the Board of Equalization, and the Franchise Tax Board all have specific interests at stake. EDD is squarely within the Governor's administration. Its director is a gubernatorial appointee. So is the director of DMV. BOE is a constitutionally created body composed of elected public officials. It's duties include certain functions constitutionally mandated relating to property taxes principally, and many more provided for by statute, such as administering the sales and use tax laws, and hearing personal income tax and corporate franchise tax appeals. The Franchise Tax Board is a statutory creation, composed of two elected officials serving ex officio – the State Controller and a member of the State Board of Equalization then serving as chair, joined by the director of the Governor's Department of Finance. At the same time, FTB is placed for budget and administrative purposes in the Governor's cabinet's State and Consumer Services Agency. The FTB is statutorily charged with the administration of California's personal income tax and corporate franchise tax laws. FTB alone has over 5,000 employees to do so.

As executive officer of the Franchise Tax Board, I would not advocate a position regarding organizational consolidation that was not first vetted by the board members themselves. In a sense, that is the answer to the question you asked. However, I do have some observations related to the administration of the state's tax system. In a sense, technology enables the potential to realize "consolidation" improvements without actual agency consolidation.

Let me offer one example. There is a need for a single place for taxpayers -- corporate, personal, employer – to find answers and get help. Thanks to technology and interagency cooperation, we can do this virtually. The good news is there is a place where that is starting to happen. It is www.taxes.ca.gov

A few years ago, the Legislative Analyst has suggested and we are helping to study how the sharing of data between departments can achieve improvement in programs the three departments administer – income taxes, employer taxes, and sales and use taxes, for instance.

I would encourage and support those and other efforts if confirmed.

Data sharing can also improve effectiveness. However, it requires information technology systems that communicate. Common standards of data security and privacy are also necessary. And, at the most elementary level, a common taxpayer identifier is essential so that a particular taxpayer in the eyes of FTB is the same taxpayer in the eyes of BOE, EDD and DMV. These seemingly simple building blocks can present enormous challenges in the context of some of the legacy computer systems. But, that is a part of the challenge of tax administration.

The goal of those efforts has to be improved operational efficiency and effectiveness for the state's sister tax agencies as a whole.

Consequently, it behooves us to work together to find the operational level opportunities for effectiveness and efficiency gains. A few years ago there was a focus on perhaps consolidating "processing" at the FTB. We handle millions upon millions of documents. We still do, and could probably absorb the other programs in some logical plan, but the reality is the greater gain is across the board from ridding us of the paper itself.

I would suggest there is a practical need to look through the governance layer of the consolidation issue to go instead directly to where the opportunities lie for operational improvement. Operational gains in attacking the tax gap, or lower audit cost-benefit ratios, or lower processing costs should be the focus at the administrator level. The tools for developing those shared visions are technology and people in my mind.

Technology means we can do things virtually rather than physically or by organizational merger. The people, of course, have to make that vision the reality through strategic shared planning, data sharing, and program development. It would be a priority for me to push for finding and realizing these gains absent any change at the governance level.

Integrated Waste Management Board

Margo Reid Brown, Board Member/Chair

Responses to Questions

1. ***Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the board, and as Chair?***

Since my appointment to the Integrated Waste Management Board as a public member in February, I have been impressed by the dedication of staff to the programs and principles of AB939 and its successful implementation. Since the Legislature's passage of AB 939 in 1989, California has led the nation in developing and promoting programs to reduce waste, recycle our precious resources, and divert materials from landfills. Local governments have accepted the challenge and we are confident that the Biennial Review of jurisdictions' data currently underway will demonstrate that the statewide recycling rate has reached 50%. Achieving this milestone still leaves us with a major challenge: How do we go beyond 50% statewide? In answering this question, we must identify and take advantage of all opportunities that will move us toward zero waste.
In the area of program goals, as a member of the IWMB, and especially as chair, I will focus on:

- Addressing the remaining 50% of the waste stream in California, particularly through our market development efforts.
- Ensuring that the Board provides the tools for local governments and other partners that will help us move toward zero waste.
- Strengthening our compliance and enforcement efforts, including our statutory authority, to ensure that public health and safety, and the environment are protected.

On a personal level, my goal is to provide the personal leadership and vision that will ensure that the Board gives staff clear policy direction, measurable goals and clear priorities, and that we are all held accountable for achieving those priorities.

2. ***In enacting the Integrated Waste Management Act (Division 30, commencing with Section 40000, of the Public Resources Code) the Legislature stated that the law's primary purpose was to reduce, recycle, and reuse solid waste, to protect natural resources and the environment, and to improve the regulations of solid waste facilities.***

 In recent years, the board has become increasingly involved in ancillary activities such as the promotion of conversion technologies (see question 4 below) and in other activities that appear to extend beyond its core statutory mission. At the same time, there have been independent evaluations of the board's

oversight and enforcement activities that suggest that may not be fulfilling the core activities assigned to it under law.

How can the board best succeed in fulfilling its basic responsibilities outlined under law? What specific steps will you take as chair to ensure the board is fulfilling its core mission first and foremost?

The Board can best succeed in fulfilling its responsibilities by focusing on its mission and statutory mandates. In order to achieve our goals and objectives, we must continue to evaluate our programs with a critical eye to their efficiency and effectiveness and their relationship to our legislative mandates. The fundamental starting point of any evaluation process is the definition of clear priorities and an accompanying set of performance measures that ensures accountability. The current evaluation process was initiated at the beginning of last year, and has continued through the present; it includes setting strategic direction for staff, and developing measurable goals for the evaluation of programs and performance. We are focusing on ensuring that the Board provides the visionary leadership to address the remaining 50% of California's waste stream, while continuing to protect public health and safety and the environment.

3. ***In the past several years, we have heard concerns about the role of the executive staff and its relationship with the board and individual board members. For example, it recently was reported that the legal staff of the board modified a longstanding position on enforcement of the trash bag law due to strong pressure from a board member.***

Please describe how you perceive your role as chair in relationship to the executive staff?

I see my role, and that of the Board as a whole, as one of policy setting. We provide leadership and direction through adoption of policies that define measurable goals for achievement of our legislative mandates and requirements under the law. As Chair, I communicate the Board's direction to the Executive Director within the framework of those policy decisions. It is the Executive Director's job to implement programs and activities to achieve the Board's goals. The Executive Director is empowered to make decisions on how to effectively run programs to achieve the greatest results and successes and the Board holds him or her accountable. Board members may contribute their expertise to aid those efforts, but cannot individually direct staff on how to proceed.

4. ***In 2002, The Legislature and Governor enacted AB 2770 (Chapter 740 Statutes of 2002) that directed the board to prepare and submit to the Legislature a study on "conversion technologies: and appropriated $1.5 million to do the report. The program called for an evaluation of conversion technologies, including a scientific peer review.***

Since that time, the role of conversion technologies has become a subject of debate. The board's current mission is to regulate these technologies as solid waste facilities, not promote them. However, some have advocated for promotion on the part of the board. What is your view?

I believe that the Board's role relative to emerging technologies is to regulate, consistent with our legislative mandates. As new technologies are developed that utilize solid waste as a feedstock, it is the Board's primary responsibility to ensure that public health and safety and the environment are safeguarded. However, we also recognize that the long term strategy for creating a zero waste California will come closer to reality as existing technologies improve, and new technologies develop, to manage portions of the waste stream. We should examine these technologies closely for opportunities to create compost, electricity, biofuels or other fuel sources, or other materials for the economic mainstream.

I believe the Board should take a comprehensive approach to fulfilling all aspects of its mission. This includes working with the Legislature, stakeholders and interested parties. As an example, Board staff have participated recently on the Bioenergy Working Group which seeks to identify ways to diversify California's energy supplies. We are participating to contribute our knowledge of landfill gas and other aspects of solid waste management that may help in this diversification. New emerging technologies for solid waste management may also contribute to this effort. Working with all stakeholders involved, including the Legislature, we may contribute to the larger societal benefit of energy diversification while accomplishing our statutory mandates of diversion from landfills and protection of public health and safety.

5. ***Since 1989, when the Act was signed into law, Californians have reduced, recycled and composted nearly half the waste disposed of in the state. At the same time, due to factors like growth in population and the economy, the amount of solid waste still disposed has remained relatively constant at roughly 45 million tons annually.***

How many cities and counties in the state still have not met the 2000 requirement to reduce, recycle, or reuse 50% of solid waste? What actions is the board taking to ensure those jurisdictions meet the statutory requirement? Please provide a schedule as to when those jurisdictions will be brought into compliance.

In your opinion, what needs to be done, if anything, to continue progress toward reduction and recycling of solid waste beyond the statutory requirements to divert 50% of solid waste from landfills? Should the board make that determination or should the law be amended to address the issue?

Overall, implementation of AB939 has been very successful. I am anticipating that the results of the Biennial Review of jurisdictions' currently underway will show that we are meeting our statewide 50% diversion rate goal. More than sixty-five percent of jurisdictions have met the

requirement and many have set their own goals that go far beyond the 50% mandate. There are jurisdictions that have had difficulty reaching the 50% goal, primarily rural jurisdictions, because of the costs of implementing programs in widespread rural communities. The IWMB continues to work with these local jurisdictions to tackle these challenges and to improve their programs to achieve greater diversion rates.

We continue to work with all jurisdictions by providing tools and technical assistance; however, we believe we must renew our focus on priority materials, which are the major components in the waste stream. These materials are organics and construction and demolition waste, as determined through our recent comprehensive statewide characterization study. We believe that focusing on the development of markets and infrastructure for these components of the waste stream is the best approach to addressing the remaining 50% of the waste stream.

6. ***The board has successfully diverted a large number of used tires from existing stockpiles in the last several years. However, many others are still used as a source of fuel and are combusted. What other alternative end uses do you believe are available and could be developed to divert used tires to other recycling uses? Have you met with your counterparts at other agencies to ensure that state government is doing all that it can to promote the use of alternative end uses for used tire?***

With the passage of the Tire Recycling Act of 1989, the IWMB has dramatically increased the number of waste tires diverted to beneficial or productive end uses from landfill disposal. In 2004, Californians generated more than 40 million waste tires. The reuse of 30 million waste tires represents a recycling rate of 74.6% in 2004, an increase of approximately 31% since 1990.

The primary focus of the *Five Year Plan for the Waste Tire Recycling Management Program* is to build a sustainable statewide market infrastructure. The Board focuses on increasing the use of Rubberized Asphalt Concrete, civil engineering applications and other tire derived products. Through a program of grants and loans to businesses and public entities the IWMB hopes to continue to build these markets. For example, through the Tire Derived Product Grant program, local governments can invest in transportation, agricultural and landscape, or recreation products made from used tires. The Board is also working to develop a comprehensive marketing development strategy to target local governments for expanded usage of these products.

The IWMB has, and is continuing to, work closely with CalTrans as well as other state agencies in promoting and encouraging alternative uses for waste tires. This is consistent with our larger effort to increase the procurement of all environmentally preferable products throughout state government.

7. ***Recent reports from the Bureaus of State Audit and from Office of the Secretary of Cal-EPA suggest that the enforcement of solid***

waste laws and standards by the board and by local solid waste enforcement agencies is uneven and at times, ineffective.

These reports suggest that the board and local entities rarely impose civil and criminal penalties for serious violations, that private waste facilities generally are regulated more stringently than public facilities, and that these enforcement agencies at times have direct conflicts in enforcement because they are part of local governments who derive income from the operation of solid waste facilities.

What specific steps do you support to improve enforcement of solid waste laws and standards? What actions has the board taken to address the concerns raised in these reports?

Over the years, various concerns have been raised about the efficacy of solid waste enforcement by the Board and local enforcement agencies (LEA's) and about the potential conflicts of interest that may exist when an LEA regulates publicly operated solid waste facilities. In my view, the Board has addressed some of these concerns very effectively, while others require further attention, including possibly pursuing additional statutory changes. It is true that enforcement action leading to penalties is rare, but at the same time compliance is very high. The Board and LEAs have largely focused their efforts on preventing problems from occurring and on working with operators to obtain timely compliance when problems do occur. Relative to enforcement action, often when enforcement is needed, too little may occur because tools that LEAs and the Board have are limited. The Board has identified some of these barriers and welcomes the opportunity to work with the Legislature on crafting statutory changes to strengthen the Board and LEA's ability to take enforcement action. In particular, we do not have the authority to impose criminal penalties for violation of solid waste laws and regulations. Our authority is limited to the ability to impose civil penalties, and we have limited ability to address illegal disposal.

Lastly, the Board continues to work with Cal/EPA on its enforcement initiative, which will provide both a framework for all Cal/EPA enforcement efforts, as well as support and guidance to ensure that enforcement and compliance programs are consistent and effective.

Linda S. Adams
Secretary for
Environmental Protection

Department of Toxic Substances Control

Maureen F. Gorsen, Director
1001 "I" Street
P.O. Box 806
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Arnold Schwarzenegger
Governor

July 7, 2006

Ms. Nettie Sabelhaus
Appointments Director
Senate Rules Committee
State Capitol, Room 420
Sacramento, California 95814

Dear Ms. Sabelhaus:

Thank you for the opportunity to provide Senator Perata and his colleagues on the Senate Rules Committee with some of my goals as director of the Department of Toxic Substances Control (DTSC), as well as answer the Senator's specific questions. I am honored to have the privilege of serving as director of DTSC, and humbled by the great responsibility and trust that service entails. Since 1991, DTSC has striven to preserve and protect public health and the environment from the harmful effects of hazardous substances and hazardous wastes. This is a tremendous charge, and no matter how hard we try and how well we do, there is always room for improvement. I am committed to working to improve this department and the benefit it provides to the health and well being of California.

Attached are responses to the questions asked in Senator Perata's letter of June 15, 2006. I look forward to discussing these issues at my August 9, 2006 confirmation hearing, along with any other issues the committee finds significant. If you or your staff have any additional questions, please do not hesitate to contact me at (916) 322-0504.

Sincerely,

ORIGINAL SIGNED BY

Maureen F. Gorsen
Director

Senate Rules Committee
JUL 10 2006
Appointments

Printed on Recycled Paper

Responses to Senate Rules Committee Questions
Regarding the Confirmation of
Maureen Gorsen, Director
Department of Toxic Substances Control

Question #1: *A) What do you hope to accomplish during your tenure as director of the Department of Toxic Substances Control (DTSC)?*

DTSC must become the strongest multimedia enforcement agency in the State; it must expand its capabilities to respond to emergencies; it must champion the role of science in policy and decision-making; it must respond to health and environmental issues that are just now coming up on the horizon; and it must be transparent in its processes and decision-making. These are already highly regarded capabilities within DTSC. I intend to build on them.

B) What goals do you have for DTSC and how will you accomplish them?

As Director, my goal will be on achieving results: specifically, ensuring that DTSC, in all of its activities, is fulfilling its mandate to protect public health and the environment.

In pursing this goal, it is critical that instead of solely measuring DTSC's activities (inspections conducted, permits issued, and cleanup decisions made), we focus on measuring the impact of those activities:

- How safe are Californians from toxic chemicals?
- How clean is our groundwater and drinking water?
- How healthy are our communities?
- How well are businesses complying with our laws and regulations?
- How much have we reduced the generation of hazardous waste?
- How much have we reduced the risk of exposures from toxic chemicals in products and packaging?

The answers will guide us in allocating resources so that we provide the maximum benefit to the public's health and environmental protection. The answers will also assist in focusing on DTSC's internal operations: improving the processes we use to reach our decisions, increasing our efficiency, and providing even more of these important public health and environmental benefits.

Some of my specific goals are:

<u>Indicators</u>
One of the most important elements of our work is measuring our impact so that we can provide the highest level of protection while making the best use of our resources. Through our brownfields and schools programs, we protect the public and school children from the harmful effects of hazardous substances that have been released into the environment, as well as protect our precious drinking water and groundwater resources. We also clear acres of land that can be reused and redeveloped into things like classrooms, housing, parks, wetlands, and commercial and industrial buildings - a key part of creating jobs, schools, recreational areas and neighborhoods, which in turn help build and revitalize communities. Through our pollution prevention efforts we reduce the amount of wastes generated,

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making our state safer for future generations. Through our enforcement efforts we ensure that hazardous wastes are appropriately managed and disposed. By requiring financial assurance from facilities, we are saving future taxpayers millions of dollars in potential cleanup costs.

Measuring these elements, in addition to our activities, provides valuable tools with which we can set priorities, adjust our processes, and target our available resources. These indicators are the backbone of our efforts to define and improve our service to the public.

Transparency

Transparency in government is essential. It gives stakeholders the opportunity to actively participate in our decision-making, provides a foundation for understanding our decisions and their impacts, and is instrumental in developing public trust. Transparency also makes us accountable and results in better decisions.

DTSC already has a strong public participation program that provides opportunities and assures input from a wide variety of stakeholders. There is still room for improvement. We would like to increase our transparency and accessibility both internally and externally.

To create a culture of openness and transparency, I am starting with myself and our internal management. Internally, we have created an intranet site and a "blog" where staff can post ideas and comment on the ideas of others, and have appointed regional advocates to improve communication horizontally and vertically. I have made my calendar and meeting agendas available to all staff. And soon, we will be measuring my responsiveness to employee suggestions and recommended improvements on the intranet.

Externally, we are in the process of taking the documents in our file system and making them available on the Internet. For instance, our new EnviroStor database instantly connects the public with detailed information on thousands of contaminated sites in their communities. Anyone with access to an Internet connection can easily find out which of these sites are in their neighborhood, what contaminants are present and the risks they may pose, and find out about how to get involved in the cleanup process. In addition to providing full, real-time, access to information in our files, it has the added benefit of reducing the number of time-consuming public records act requests and the costs of paper responses.

We are considering ways to improve our permit appeals process. Specifically, we are looking at ways to include the benefits of board-type public deliberation elements into a department decision-making structure.

Finally, we have formed external stakeholder groups, and asked them to provide their ideas and perspectives on DTSC and how we do business, and to provide feedback on concepts and priorities being considered.

Enforcement and Compliance

Building on our strength in enforcement, DTSC is not far from creating one of the premier multimedia enforcement programs in California and the nation. We are focusing our resources to expand our success to address those entities that have traditionally fallen outside of our net: those dishonest business interests handling hazardous waste outside DTSC's licensing requirements. To better address this area, we have invested in a more robust complaint response system, as well as enhanced our data mining and enforcement intelligence efforts to target enforcement efforts (e.g., illegal transport stings, explosives

stockpiling) In addition, we are adjusting our enforcement goals and measurements from being focused solely on inspections completed and enforcement actions taken or penalties assessed to maximizing compliance with our hazardous waste laws, integrating pollution prevention and compliance assistance efforts into a more robust enforcement program, using all available tools in the enforcement continuum to achieve these goals.

Sound Science

Sound science is at the core of what DTSC does and the decisions we make. It ensures that our decisions provide the highest level of protection and are defensible. To provide direct advice and input on the use of science in DTSC programs, a "chief scientist" position will be created. Reporting to the Director, the Chief Scientist will make recommendations on science policy, serve as our principal science and technology advisor, and provide direction on scientific and engineering policy.

The Chief Scientist will also help prepare DTSC plan for the future. New technologies and scientific advances have taught us that what was once considered acceptable or beneficial to the environment (e.g., MTBE), may turn out to pose a risk to our health and our environment. Knowledge of these emerging issues (e.g. nanotechnology, green chemistry) at the top policy level will assure that policy makers better understand these risks and are prepared to address them.

Brownfields

There may never be sufficient public resources to fully address the thousands of brownfield sites throughout California. To address these sites, DTSC needs to encourage local government and private investment.

The primary "deterrent" to local government and private investment in brownfields is uncertainty – the unknown factor related to its environmental condition that creates unpredictability in a property transaction. The uncertainty takes several forms, namely:

- Unknown costs (both cleanup and regulatory)
- Unknown timing to reach regulatory decisions
- Unknown, and potentially long-term liability
- Unknown jurisdiction – Who can provide oversight and eventual site clearance?.

Most of these uncertainties are absorbable if the property has sufficient value. For marginal or "upside down" properties (properties where the cleanup and development costs equal or exceed its value), these uncertainties result in blighted, eyesore properties remaining that way.

These sites exist in local jurisdictions and communities, and often have legacies of blight or other challenges in addition to environmental problems. They represent great potential in landlocked urban areas, representing accessible housing, parkland, open space and infill development. They are instrumental to controlling sprawl and outward growth. DTSC is actively involved in hundreds of these sites across the state, from potential school properties, to dilapidated industrial or commercial sites. These sites become open space, parks, housing, shopping areas, and new industries.

Through the recent Brownfields Memorandum of Agreement, DTSC and the Water Boards have made significant strides in addressing some aspects of this uncertainty. We recognize, however, that DTSC and its oversight role can add to or compound some of these uncertainties. It is essential that we improve our processes, seek and implement new tools, and invest limited public funds strategically to move these projects toward successful completion as quickly as possible without sacrificing protection

of the public, or the public's ability to be involved in decisions that directly impact them and their children.

Making our process transparent and predictable allows brownfields investors and the public to make informed decisions about these properties, which in turn allows these properties to realize their full potential in the communities where they are found.

Pollution Prevention

Pollution prevention pays. And it's the most effective control strategy to assure that chemicals of concern don't reach surface or groundwater. By avoiding waste generation in the first place, businesses and government can also reduce operating costs, reduce worker exposures, insurance premiums, potential future liability associated with waste disposal and improve overall environmental compliance. Our 32 staff who work on pollution prevention have been responsible for a number of highly successful pollution prevention initiatives, including targeted projects (e.g., vehicle service and repair, marina and boatyard maintenance, petroleum refinery and semiconductor industry), hazardous waste source reduction, and technical studies and information transfer (e.g. the highly successful mercury reduction project at hospitals).

Unfortunately, in spite of all of these laudable efforts at preventing pollution and reducing hazardous waste generation, on a per capita basis hazardous waste generation rates are on the rise. The message, as important and as valuable as it is, is not reaching everyone who could benefit from it.

To improve our effectiveness at reducing hazardous waste at its source, we want to move more staff and resources into this area. The most effective vehicle for the pollution prevention and source reduction message to businesses is through inspectors – both state and local. They visit businesses regularly, and are exposed to the trends and the regulatory drivers that influence changes in work practices. By integrating pollution prevention into DTSC's traditional regulatory programs, we can improve our effectiveness, and work to disseminate pollution prevention and compliance assistance at its source to prevent pollution at the front end – rather than regulate at back end.

Partnering and Coordination

If we are to provide better service to the public and use our resources more effectively, we must coordinate our work with the other boards, departments and offices in Cal/EPA. This will not only improve the overall effectiveness of our environmental programs, it will reduce duplication and confusion, and increase clarity and efficiency.

We will work closely with the other Call/EPA BDOs to identify areas where efficiencies can be gained through better coordination. This includes site cleanups (brownfields), electronic and universal waste generation and disposal, water quality, air quality, public outreach, and the direction and application of emerging science.

There has been considerable debate over which agency within Cal/EPA should be designated as "lead agency" over hazardous substances cleanups; DTSC or the regional water quality control boards. Both agencies have legal and regulatory jurisdiction to clean up contaminated sites. However, in recent years, most parties have advocated DTSC's cleanup process over the water board's due to its more extensive public participation opportunities.

Cal/EPA and the two cleanup agencies announced a new Memorandum of Understanding that administratively seeks to resolve overlap between the two agencies' cleanup activities.

***Question #2:** A) Please describe the implementation process for the MOU.*

Summary of the MOA

The Brownfields MOA was drafted in response to then Cal/EPA Secretary Tamminen's July 20, 2004 Brownfields Initiative memo. It was signed by Cal/EPA, DTSC, State Water Board, and all nine Regional Water Boards on March 1, 2005.

The purpose of the MOA is to improve coordination between DTSC, the State Water Board, and the Regional Water Boards and their oversight of cleanup activities at brownfield sites. The MOA was designed to accomplish the following objectives:

1. It limits oversight to only one of the agencies
2. It establishes procedures and guidelines for identifying the lead agency
3. It calls for a single, uniform site assessment procedure to be used by both
4. It requires all cleanups to address the requirements of both agencies
5. It defines the roles of support agencies, and procedures for transferring sites to the other when appropriate
6. It requires both agencies to provide ample opportunity for public involvement in their cleanup decisions
7. It commits both agencies to review timeframes
8. It commits both agencies to coordination and communication on brownfield sites

The most significant operational change brought about by the MOA is that for brownfield sites being managed under DTSC's or a Regional Water Board's voluntary site cleanup programs, anyone requesting oversight is required to submit an application to initiate the process to assign the appropriate oversight agency. The MOA contains the procedural steps to be followed by the agencies in making lead agency determinations for brownfields sites, including a dispute resolution process to be used in instances where staff are not able to readily agree on the determination of appropriate lead state regulatory oversight agency for a site.

Implementation Process for the MOA

To implement the MOA, an inter-agency working group comprised of representatives from Cal/EPA, DTSC, the State Water Board and the nine Regional Water Boards was established. Each office identified Brownfield Coordinators, so that outside parties know who to contact about initiating State voluntary oversight agreements. Initially, the group met weekly (via teleconference); these meetings are now held approximately every two months. Training was also held for all affected staff and conducted

by lead staff from DTSC and the State and Regional Water Boards. Managers conducted more focused training sessions for their affected staff in the various regional offices.

One purpose of the regular conference calls is to discuss implementation of the MOA, including use of the database, use of the MOA criteria to guide decision-making, and any other related topics. The conference calls provide an opportunity for DTSC and Water Board staff to exchange information and ideas about the sites entering the system and the sites they are working on. These regular meetings have had a collateral benefit of facilitating discussions between the agencies on issues beyond the scope of the MOA. The MOA has been instrumental in establishing a culture of trust and collaboration where there has historically been competition and rivalry.

A subset of this group has recently developed a draft uniform site assessment tool called for by the MOA; this tool will be used by all DTSC and Water Board staff. The site assessment tool will (for the first time) provide regulated parties with a comprehensive set of elements that both agencies consider in assessing environmental and health related issues at sites.

B) Are there sites that have been subject to the MOU process?

When a party contacts either DTSC or a Regional Water Board and wants to enter into a voluntary agreement to obtain state oversight of their site investigation and/or cleanup, their counterpart in DTSC or a Regional Water Board is contacted. These staff exchange information about the site, and a decision regarding whether DTSC or a Water Board should provide regulatory oversight is made (within 10 working days).

An internal database was developed to enter and track site information related to the lead agency selection process. As indicated by the statistics provided below, to date 160 applications have been received by the agencies and 151 lead agency determinations have been promptly made. Four projects were determined to be ineligible for the MOA process and 5 projects are pending a lead oversight agency determination (as of June 21, 2006). Since March 1, 2005 only one project has required dispute resolution, and that project was resolved at the first level of the dispute resolution process.

MOA Statistics –March 1, 2005 through June 21, 2006

■ Total Applications Received	160
■ Applications Received by DTSC	73
■ Applications Received by Regional Water Boards	87
■ Lead Agency Determinations Made	151
■ Determinations Made to DTSC	85
■ Determinations Made to Water Board	66
■ Determinations Pending	5
■ Applications requiring Dispute Resolution Process	1
■ Sites not Eligible	4

C) Has it reduced uncertainty associated with cleanup actions and made the current cleanup process more efficient and effective?

The MOA has significantly reduced uncertainty. Now parties know that when they are working with DTSC or a Water Board, it is with the full knowledge and support of the other agency because the lead

agency decision was a joint decision. Parties also now know that, regardless of which agency they are working with, the substantive requirements of both agencies will be met through the oversight process. By working together to designate the most appropriate lead regulatory oversight agency and then remaining in regular communication about the sites that are being worked on and any site issues that may arise, the MOA is promoting a level of communication and collaboration between the two programs that has not existed in the past. This ongoing communication and collaboration, along with the overall goals of the MOA (such as avoiding duplication of effort, instilling consistency and predictability in the process, and ensuring ample opportunities for public participation) are making the cleanup process more efficient and effective.

D) Is it time to integrate the DTSC and regional water board cleanup programs in statute?

Whether there is merit to the notion of a single cleanup agency or whether this is the right time to pursue such integration, I cannot say for certain. Both DTSC's and the regional water boards' cleanup programs each have their proponents and critics, none of whom are shy about sharing their opinions on the subject.

What I can say is that, by and large, the people of California do not care that there are different cleanup programs, or why it has come to be this way. What they do care about is their and their children's health and well-being. They care about the environment. They care about whether or not contamination that is affecting them is being fully addressed. They do not care about which state agency is responsible to make sure they are safe and the environment is protected, so long as someone is. Chemical releases and contamination do not confine themselves to any particular environmental media, nor do they respect government program boundaries. Regardless of whether the cleanup program is found in one or ten different organizations, it is much more important that they all operate in an integrated, coordinated fashion, and that most importantly, whomever is responsible, the result is the same uncompromised level of protection and quality of cleanup.

The Brownfields Initiative memo, mentioned above, set in motion the foundational elements of this functional integration. Most people focus on the most visible product of the Initiative: the MOA. For all of the concerns raised about it when it was first introduced, I am pleased with the results of the MOA so far. It has brought about a level of coordination and cooperation between our two cleanup programs never before experienced. But for all of the attention it has received, the MOA, with its lead agency selection process and its resulting coordination and cooperation, is not the most significant aspect of the Initiative. Much more significant was the Initiative's direction to establish "a uniform site assessment procedure that both agencies are to use to assess environmental and health related issues at brownfield sites," its requirement "that brownfields cleanups address the issues and concerns of both agencies," and its provision that "allows the lead agency to gain the input, advice and expertise of the other [agency] when necessary." These elements create the foundation for cleanups that are functionally equivalent, and are much more fundamental and far reaching than merely a process to facilitate the selection of a lead agency. I am pleased with the progress that DTSC, the State Water Board and the Regional Water Boards have been making in development of their uniform site assessment guidelines and further integration of the cleanup requirements, and will continue to push to increase this type of functional integration.

Another benefit of these coordination and integration efforts is that it has given DTSC the opportunity to compare its cleanup program and processes side-by-side with those in the Regional Water Boards, and

to glean ideas that we hope to integrate as we strive to streamline the processes DTSC uses to clean up brownfields so that these sites can be returned as community and economic assets as quickly as possible.

According to the department's web site, "the Department of Toxic Substances Control, protects Californians from exposures to hazardous wastes." Its "mission statement" asserts: "The Department's mission is to restore, protect and enhance the environment, to ensure public health, environmental quality and economic vitality, by regulating hazardous waste, conducting and overseeing cleanups, and developing and promoting pollution prevention."

Science increasingly shows that hazardous substances in the environment may be a cause, or contributing factor, to human and environmental ailments and disease. The US EPA has begun a program to check whether synthetic chemicals can disrupt hormones in humans and animals. These "endocrine disrupters" can cause cancer, birth defects and immune problems.

***Question #3:** What specific steps is the department taking to reduce the level of persistent bio-accumulative toxins, such as lead and mercury, in the environment? What action is it taking to reduce so-called "endocrine disrupters," as the US EPA is doing?*

Mercury

DTSC has taken a variety of steps to address the threat of mercury:

1. In conjunction with the national Hospitals for a Healthy Environment (H2E) program, DTSC staff implemented California's Mercury (Hg) Elimination Leadership Program (HELP) which audited and trained California hospitals in pollution prevention (P2) and mercury reduction. Out of 181 hospitals nationwide, 79 California hospitals have been recognized as mercury-free by H2E. Combined, these California hospitals removed 4,000 pounds of mercury. Wastewater authorities estimate that 5-10% of the mercury reaching treatment plants comes from hospitals. As a result of DTSC's efforts, California received the first H2E Achievement Award at the 2006 H2E Awards Ceremony held in Seattle, Washington.

2. To promote the removal, collection, and management of mercury switches found in scrap vehicles DTSC negotiated a Memorandum of Understanding (MOU) with the State of California Auto Dismantlers' Association (SCADA) and the End-of-Life Vehicle Solutions Corporation (ELVS), a non-profit organization composed of the major auto manufacturers (Ford, BMW, Daimler-Chrysler, GM, Mitsubishi, Subaru, and Volkswagen).

3. Persons generating mercury-containing wastes are subject to hazardous waste regulatory requirements that ensure the safe handling, storage, transportation, treatment and recycling or disposal of these wastes;

4. DTSC has aggressively adopted regulations that "list" discarded mercury-containing devices as hazardous wastes, and has adopted universal waste management requirements to encourage the safe and simplified management of mercury-containing wastes such as fluorescent lamps and mercury thermostats.

5. DTSC has been involved in national efforts such as the Quicksilver Caucus to coordinate its efforts with those of other states, industry and environmental groups to develop and implement national strategies for mercury management.

6. DTSC has conducted outreach and education efforts, including workshops, educational brochures and best management practices guidance for the management of automotive mercury switches and mercury containing devices in hospitals.

7. DTSC directs the cleanup of properties where mercury contamination has been found to threaten human health or the environment.

8. DTSC continues to evaluate waste management practices to determine if additional requirements are needed to encourage recycling and prevent releases of hazardous waste to the environment. For example, DTSC may require the use of dental amalgam separators to prevent the release of mercury wastes into the sewer system if the existing universal waste requirements prove to be insufficient.

Lead

For a description of DTSC's efforts related to lead, see the response to Question #7.

Endocrine Disrupters and other Persistent and Bioaccumulative Toxins

DTSC recognizes the importance of being able to identify Persistent Bioaccumulative Toxins (PBTs) and endocrine disruptors, and to understand their sources, their presence in products and wastes, and possible pathways of exposure for people and the environment. Unlike U.S. EPA, however, DTSC does not have the same level of resources or funding to devote to programs of identification and research. Using its available resources, however, DTSC scientists have been conducting pioneering biomonitoring studies to determine the levels of many PBTs and endocrine disrupters in humans (blood, breast milk, and urine), as well as the levels in wildlife. More recently, DTSC has taken the lead nationally in examining sources and exposure pathways of the brominated flame retardants (polybrominated diphenyl ethers, or PBDEs). In all of these cases, DTSC has used focused biomonitoring and environmental studies to identify sources and exposure pathways for these PBTs and endocrine disruptors.

DTSC primarily regulates only those PBTs and endocrine disrupters that are either contained in hazardous wastes or that are hazardous substances released to the environment that must be cleaned up. DTSC also regulates some products or materials that may generate hazardous wastes or release hazardous substances to the environment, including lead, cadmium, mercury, and hexavalent chromium in packaging under the Toxics in Packaging Prevention Act of 2003, and perchlorate under the Perchlorate Contamination Prevention Act of 2003.

On DTSC's horizon are other major industrial chemicals. The virtually indestructible fluorinated compounds, the PFOS and PFOA chemicals are used as non-stick, water- and grease repellent barrier coatings found in paper plates, frying pans, and fabrics used in upholstery and clothing (Teflon, Scotch-Gard, etc.). The billion-pound-per-year bisphenol-A is used as a chemical intermediate. The phthalates are used in children's toys and other flexible plastics. The nonylphenol ethoxylates are commonly used as non-ionic surfactants in detergents and cleaners. DTSC is interested in developing data that can be used in making waste management decisions for these chemicals.

DTSC is currently upgrading its analytical capabilities for PBTs and endocrine disrupters with advanced instrumentation (high resolution gas chromatograph/mass spectrometer and liquid chromatograph triple-quadrupole mass spectrometer, portable mercury analyzer). These will enhance DTSC's capabilities to detect and assess the public and environmental health impacts of water-soluble, thermally unstable, or complex mixtures of PBTs or endocrine disrupters in hazardous substances.

Universal wastes are hazardous wastes that are generated by the public in common items like batteries and electronics. Universal waste rules adopted by DTSC allow commonly used, low-hazard wastes such as these to be managed under less stringent requirements than other hazardous wastes.

This past spring, DTSC announced that common household items like batteries could no longer be disposed in solid waste landfills.

Question #4. *What steps are you taking to ensure effective and smooth phase out of landfill disposal of universal wastes?*

Universal waste is, as the name suggests, ubiquitous in our society; small batteries, mercury switches/devices and non-empty aerosol cans that contain hazardous materials. To use our limited resources most effectively, DTSC is working with other State and local agencies to both educate and enforce its regulations. DTSC is inspecting commercial facilities that handle and recycle these wastes. The recyclers handle the largest quantities and therefore pose the biggest risk. It is also important that the public has confidence that wherever they are taking their waste, it is being properly managed. DTSC is also targeting its inspection and enforcement resources in the following ways:

Commercial Generators

DTSC is also working to identify commercial sources of larger quantities of these wastes so that the generators can be spot checked for compliance. This would include; for example, working with auto-dismantlers to make them aware of the need to remove mercury switches, then conducting focused inspections to assure that they are indeed removing the switches and properly managing them. If a national removal program is put in place by industry, DTSC will be looking for those dismantlers who are not participating in the program. Similarly, DTSC will work with CUPAs to target other sources of universal waste such as utility construction companies that use spray paint to mark underground lines on streets prior to excavation. Another example of a target source would be heating and air conditioning companies that have mercury associated with thermostat replacement work. DTSC intends to focus on one or two of these sectors per year inspecting a minimum of 20 to 25 generators within the selected categories to assess awareness and general compliance. Depending upon the results additional inspections may be conducted.

Partnerships with Certified Unified Program Agencies (CUPAs)

In partnerships with the CUPAs DTSC is responding to and investigating complaints about universal waste mismanagement. CUPAs are also incorporating universal waste into their routine generator inspections. This interaction provides an opportunity to educate generators in a one-on-one setting about the requirements. If a few individual units of universal waste is found in a dumpster, the generator would be warned and told to remove the waste from the trash. Subsequent violations could result in formal enforcement.

Load Checking

DTSC is working with the Integrated Waste Management Board (IWMB) and local enforcement agencies to encourage load check programs at landfills and to identify (and reject) any loads with significant quantities of universal waste. If the hauler is able to identify who they got the rejected load from, a referral can be made to the CUPA or DTSC to follow up (again as local resources allow).

Electronic Waste

A major sector of the universal waste is electronic wastes. DTSC annually inspects the recyclers of the electronic waste who receive funding from IWMB. DTSC is also spot-checking and responding to complaints concerning other e-waste recyclers that don't participate in the e-waste program. DTSC will be expanding its e-waste inspections with additional staff that became available July 1, 2006. One of the primary focuses of these positions will be to work in partnership with IWMB to identity and prosecute fraud. As a part of the planned field work DTSC will be inspecting an increased number of "handlers" who send e-waste to the recyclers. This will be another opportunity to assure that universal waste is being properly handled.

Education/Outreach

In addition to the efforts for compliance and enforcement for universal waste lamps, DTSC has conducted extensive outreach and education efforts for other universal wastes. Specifically, efforts to educate and train auto dismantlers and appliance recyclers on the management requirements for mercury containing switches have been extensive. DTSC developed training manuals and best management practices guidance for the identification and management of mercury switches in vehicles and appliance. Over a dozen training workshops were provided to auto dismantlers throughout the state. DTSC also, in its most recent adoption of regulations, made the universal waste regulations more user friendly by making the text more clear and concise, resulting in a nearly 25% reduction in text, making them easier to understand and comply with.

California Take-It-Back Partnership

The California Take-It-Back Partnership (Take-It-Back) is a collaborative effort between government and business to provide convenient and safe ways for consumers to dispose of everyday hazardous wastes such as batteries, fluorescent lamps, and electronic devices. The Take-It-Back effort was kicked off at a press conference during Cal/EPA's Earth Day celebration. On that day DTSC, CIWMB and various local government and retailer representatives announced the start of efforts to sign up retailers who pledge to take back from their customers one or more universal wastes at their stores. The Take-It-Back program provides free and convenient recycling opportunities for California residents, and provides the participating retailers with a marketing tool to draw additional customers in to their stores.

Currently Take-It-Back has over 100 retail partners. Most prominently, IKEA has joined the partnership and is taking back universal waste batteries and lamps at each of their California stores. Numerous independent stores, such as ACE Hardware stores are participating. Additionally other partnerships are being developed with non-profit organizations such as Keep California Beautiful and with manufacturers such as Hewlett Packard. The Sacramento Municipal Utility District is also working with DTSC to establish a "partnership" to underwrite the costs of fluorescent lamp recycling in various Sacramento retailer locations. SMUD is also working to expand their customer awareness of take-back opportunities via distribution of information in their utility bills and other media.

Household Hazardous Waste Information Exchange

DTSC actively participates in the Household Hazardous Waste Information Exchange meetings to support statewide development of collection and recycling infrastructure and co-sponsors the annual statewide Household Hazardous Waste Conference. Additionally, DTSC works on an ongoing basis with the California Integrated Waste Management Board to insure that recipients of HHW grants receive needed technical support and are in compliance with the hazardous waste regulatory requirements.

It should be noted that the infrastructure for the collection and recycling of one waste stream, universal waste electronic devices, has significantly expanded. Four years ago there were only a handful of e-waste collection and recycling companies. Since the inception of the Electronic Waste Recycling Act of 2003 (SB 20/50) there are now 48 approved recyclers of covered electronic devices and 401 approved collectors. While this infrastructure was developed largely based on the availability of funding to support the collection and recycling of certain covered electronic devices, many of the collectors and recyclers of e-waste eligible for funding by the EWRA are also collecting and recycling devices for which EWRA funds are not available.

As outreach and education regarding the new requirements continue, DTSC will focus its enforcement resources on complaint response and on violations of the hazardous waste regulations that present immediate and significant risks to public health or the environment.

Question #5. *Does the department have a process to add additional items to its universal waste list? If so, please describe that process.*

The universal waste regulations allow anyone to petition DTSC to have new waste streams added to the list of universal wastes. Such a petition has to demonstrate that the designation:

- is appropriate for the waste or category of waste;
- will improve management practices for the waste or category of waste; and
- will improve implementation of the hazardous waste program.

The petition is also required to address a variety of other factors, including:

- the waste or category of waste is a hazardous waste and is generated by a wide variety of generators;
- the waste or category of waste is commonly generated by a wide variety of types of establishments;
- the waste or category of waste is generated by a large number of generators and in relatively small quantities;
- the systems to be used for collecting the waste or category of waste would ensure close stewardship;
- the risk posed during accumulation and transportation of the waste is relatively low compared to other hazardous wastes, and the proposed universal waste management standards would be protective of human health and the environment;
- regulating the waste as universal waste will make it more likely that the waste will be diverted from non-hazardous waste streams to proper hazardous waste recycling, treatment;
- regulating the waste as universal waste will improve implementation of and compliance with the hazardous waste regulatory program.

Although the regulations allow for the addition of new universal wastes, DTSC's authority to add wastes to the universal waste system is limited. Universal wastes are, by definition, hazardous wastes. In being identified as a universal waste, that hazardous waste is being exempted from the broader set of hazardous waste requirements. For this reason, the Legislature limited DTSC's authority to designate wastes as universal wastes. By statute, DTSC has the authority to designate wastes as universal waste in only five specific categories:

- Electronic hazardous wastes;
- Hazardous waste batteries;
- Hazardous wastes containing mercury;
- Hazardous waste lamps; and
- Lead-based painted debris that is a hazardous waste.

Adding any other type of hazardous wastes besides these to the universal waste system would require new statutory authority.

DTSC issued regulations several years ago requiring that fluorescent lamps be recycled or disposed of as hazardous waste.

Question #6. *A) What action have you taken to develop an enforcement program for these regulations? Separate from enforcing prohibitions against landfilling fluorescent bulbs, what actions have you taken to educate commercial and other users regarding compliance with these regulations?*

Education and Outreach

DTSC developed a fact sheet that emphasizes the requirement to recycle spent mercury lamps, directs businesses towards DTSC, CIWMB, U.S. EPA, and recycling industry internet resources for lamp management, and offers compliance assistance through DTSC's Public and Business Liaisons.

Fact sheets have been mailed or emailed to over 10,000 "big box" retailers, lighting contractors, and building management and building maintenance associations.

A database of targeted lamp generators has also been developed that identifies over 2,000 contacts including retail & commercial fixture suppliers, tenant improvement companies, electrical supply houses, and lighting equipment suppliers.

Additional future targets for mailing include restaurant chains, government agencies, educational institutions, healthcare institutions, and other businesses that are expected to be major generators of spent fluorescent tubes.

DTSC is distributing posters and stickers that promote proper management of tubes. One of the primary outreach targets will be schools. DTSC wants to ensure that school janitorial staff is aware of the need to have tubes recycled so that children are not exposed to mercury.

Training

DTSC has contracted with the California State University at Sacramento School of Continuing Education to develop web-based training on lamp management. This training should be available online in late fall of this year. DTSC has also contracted with the California Compliance School (through Bakersfield Community College) to develop a Mercury Lamp Recycling Module for their basic hazardous waste generator education program. Both of these efforts are partially funded by a U.S. EPA Mercury Lamp Recycling Grant.

DTSC is helping the Department of General Services (DGS) to hold training sessions around the State to educate the State's own building managers in proper lamp management. DGS has developed a management memo that is undergoing final review and approval. This directive will be sent to all DGS facility property managers advising them of the need for proper handling of tubes. DGS is also looking at standardized language that will be included in any future lease agreements that would require property owners who provide space to State agencies to also comply with the lighting waste recycling conditions.

DTSC is also meeting with University of California (UC) environmental officers to insure proper management of the large volumes of lamps generated by the UC campuses.

Enforcement Initiative

In early 2005, DTSC launched the mercury lamp enforcement initiative to improve the recycling rate for spent fluorescent tubes and other mercury-containing lamps generated in California. The initiative

began with DTSC conducting outreach by sending out several thousand one-page fact sheets to affected businesses. The fact sheet clearly states that spent fluorescent tubes must be recycled and then directs the business to the Internet and other hardcopy resources on the proper management and recycling of spent fluorescent tubes. Fact sheets were mailed to "big box" retailers (e.g. Albertson's, Costco, Kmart, Longs Drugstores, Target, Wal-Mart, etc.), lighting contractors, and building management and building maintenance associations throughout the State.

Targeted Inspection Efforts

Initial inspections were conducted at 33 "big box" retailers to determine their compliance rate with the mercury lamp recycling requirement. DTSC inspectors left educational and guidance materials with businesses and, where appropriate, cited violations. Out of these inspections, only a single Class II violation was identified, and only six facilities were found to have minor violations.

In late 2005, DTSC conducted inspections of lighting contractors involved in removing fluorescent tubes from offices, buildings and businesses. A total of 24 lighting contractor inspections were conducted, of which almost half had minor violations, primarily related to labeling and storage violations. DTSC also conducted inspections of the two permitted mercury lamp recycling facilities and investigated one illegal drum crusher. Formal enforcement actions were taken at one of the recycling facilities for accepting unauthorized wastes and against a school district for illegally treating hazardous waste. By the end of 2005, DTSC staff completed a total of 60 mercury lamp inspections.

Goal: Increased Recycling Rates

Larger businesses, the target of DTSC's efforts, generate between 60% and 70% of the State's mercury lamps. DTSC expects that the combination of outreach, compliance assessment, and publicity about these efforts will promote a higher level of recycling among these larger businesses. DTSC will be working with California's authorized mercury lamp recyclers to gauge the effectiveness of these efforts and measure the impacts on the recycling rates.

Expansion of Initiative Template to CUPAs

DTSC intends to translate the experience gained from the mercury lamp enforcement initiative into a simple and efficient template for inspection and enforcement and provide the template to the Certified Unified Program Agencies (CUPAs). This will give CUPAs the tools to assess compliance with mercury lamp recycling requirements during their 30,000 annual generator inspections.

Contaminants like lead continue to be serious problems in the environment. DTSC has publicly stated it is revising concentration levels at which lead waste would be considered hazardous based on recent scientific studies demonstrating that lead is hazardous at almost any level for children.

Question #7. *What is the status of this effort? What is your timetable for releasing new proposed regulations on this subject?*

DTSC developed a Draft Lead Report that examines lead in the environment, lead exposure, and the health effects associated with that exposure. Recent findings regarding the health effects of lead indicate that sensitive populations, particularly children and pregnant women, can be affected by low concentrations of lead. DTSC's total threshold limit concentration is the hazardous waste criterion that is intended to be protective from direct exposure to wastes. The lead TTLC of 1000mg/kg was developed over twenty years ago, before the current findings regarding health effects were completely known.

On September 30, 2005 DTSC held a workshop in Sacramento (with participants from Southern California via video conferencing) to present its Draft Lead Report and to discuss and receive comments on the report and its findings, and to solicit ideas for revising the total threshold limit concentration for lead. Part of the discussion also focused on recent statutory changes directing DTSC to develop alternative management standards for lead painted wood debris classified as a hazardous waste.

Using the information gathered during the workshops, DTSC is developing draft proposals for new threshold levels, including information supporting the levels. In early August, DTSC will send out a public notice for a workshop in September, at which time it will also propose alternative management standards for lead based paint debris. It should also be noted that by law, any new threshold, and the methodology and supporting information used in its development, must be peer reviewed. This peer review process would be initiated after the September workshop and any modifications based on workshop comments.

Perchlorate is both a naturally occurring and human made contaminant increasingly found in groundwater, surface water and soil. It greatly impacts human health by interfering with iodine uptake to the thyroid gland. Perchlorate contamination has been found in 20 states.

AB 826 (Jackson, Chapter 608, Statutes of 2003), the Perchlorate Contamination Prevention Act of 2003, required DTSC to adopt regulations by December 31, 2005 specifying best management practices for perchlorate and perchlorate-containing substances. Owners or operators of a perchlorate facility are prohibited from managing perchlorate materials unless they are in compliance with the best management practices.

Question #8. *A) Please describe the status of implementation of AB 826.*

Perchlorate salts are strong oxidizers which may be highly reactive and flammable in its pure form. Due to these properties, these pure salts are already regulated as a hazardous material. However, perchlorate can be found in much lower concentrations in a variety of products and materials. Residuals from perchlorate material or wastewater coming in contact with perchlorate were previously unregulated but may still pose a health risk especially if perchlorate seeps into groundwater. AB 826 (Ch. 608, Stats. of 2003) directed DTSC to adopt Perchlorate Best Management Practices (BMPs). The adopted regulations fill this gap and minimize perchlorate being released into the environment.

DTSC adopted the regulations by the December 31, 2005 deadline.

What do the regulations do?
The Perchlorate BMPs are intended to increase the awareness of perchlorate handlers of perchlorate's threats. The labeling requirements require that the handlers of the material be informed of the perchlorate presence and the BMP requirements; the packaging and containment requirements minimize releases to the environment; the disposal and discharge requirements ensure that the landfills and Publicly Owned Treatment Works are informed of the presence of perchlorate in wastes. In addition, there are pollution prevention requirements for businesses handling fertilizers, flares, and explosives.

Ongoing DTSC efforts
DTSC will be collecting notifications from significant perchlorate handlers as well as environmental monitoring data. The regulations require that businesses managing more than 500 pounds of solid perchlorate material or 55 gallons of liquid perchlorate material submit a one-time notification to DTSC of their perchlorate-related activities by September 2007. In addition, businesses using fireworks in amounts greater than 4,000 pounds net explosive weight per year or rocket engines in amounts greater than 8,000 pounds per year must submit analytical results of environmental monitoring for perchlorate to DTSC.

Outreach
DTSC has provided training in seven cities throughout the state during the months of May and June 2006 to state regulators and the Certified Unified Program Agencies (CUPAs). Education and outreach to the affected stakeholders is being planned for later this year. DTSC will be maintaining a website containing perchlorate best management practice information, including the new perchlorate BMP fact sheet and a link to the regulations. The website also contains lists of perchlorate containing material, perchlorate testing guidance, and links to other resources.

B) Is DTSC taking other steps to protect public health and the environment from perchlorate contamination?

Site-Specific Cleanups

Under the authority of Chapters 6.5 and 6.8 of the Health and Safety Code, DTSC conducts and oversees the remediation of properties throughout the State—including former industrial plants, military bases, small businesses, and landfills—that are contaminated with hazardous substances and wastes (some of which are contaminated with perchlorate). Thirty-five sites with confirmed perchlorate contamination are regulated by DTSC and the Water Boards. Seventeen sites are undergoing remediation for a range of contaminants and six sites are being cleaned up specifically for perchlorate.

Site Discovery

DTSC is engaged in an ongoing process of discovery at properties suspected of using perchlorate. One example is DTSC's participation in the California/Department of Defense (DOD) Perchlorate Working Group. The working group was formed in 2003 to work with the military services to help focus initial sampling for perchlorate at current or former military facilities in close proximity to public drinking water wells. After identification of locations where sampling was needed, these sites were prioritized so that sites which posed the most likely threats were investigated first. Five sites were identified through this initial process as a high priority for sampling and possible remediation. The next phase of sampling will address perchlorate contamination at military sites that pose a threat to groundwater and ecological receptors.

Perchlorate Roundtable

In addition to ongoing site mitigation and corrective action at sites known to be impacted with perchlorate, DTSC continues to participate in the multi-agency perchlorate roundtable convened through the California Environmental Protection Agency (Cal/EPA) several years ago. Roundtable participants include staff of DTSC, the State Water Resources Control Board, the Office of Environmental Health Hazard Assessment, the Department of Health Services, the Department of Food and Agriculture and the U.S. Environmental Protection Agency (U.S. EPA). The Perchlorate Roundtable collaborates on site specific issues, regulatory initiatives, existing technology and emerging science, investigation at military sites and policy initiatives. The Perchlorate Roundtable has been engaged with U.S. EPA in investigating "perchlorate study areas" in the State within which more intensive investigation of possible sources of contamination is ongoing. This roundtable also serves as the forum to discuss issues related other emerging contaminants in the State.

Other Activities

DTSC's Environmental Chemistry Laboratory has drafted guidance to improve the reliability of laboratory analysis for perchlorate. Additionally the DTSC Pollution Prevention and Technology Development Program has summarized information regarding available perchlorate treatment technologies and costs. These valuable information sources are available on DTSC's web page.

The Electronic Waste Recycling Act of 2003 (SB 20 (Sher, Chapter 526, Statutes of 2003,. was signed into law on September 24, 2003. Among other things, the law requires DTSC to determine whether electronic waste is hazardous for purposes of regulation under the law.

***Question #9.** A) What is the status of DTSC's efforts to implement the law?*

DTSC's activities to implement the Electronic Waste Recycling Act (EWRA) include:

- Identifying of Covered Devices
 DTSC has worked with its Environmental Chemistry Laboratory to determine which video display devices are covered electronic devices (CEDs) subject to the provisions of the bill. DTSC developed sampling and analysis protocols for these electronic wastes. Results from the sampling and analysis of the electronic waste testing demonstrated that cathode ray tube (CRT) devices (televisions and computer monitors), liquid crystal display (LCD) flat panel monitors, plasma TVs, LCD TVs and laptop computers contain levels of metals that exceed hazardous waste limits.

 DTSC adopted two sets of emergency regulations to identify those devices that are presumed hazardous and subject to the provisions of the bill. Regulations adopted in July 2004 listed CRT devices, televisions, CRT computer monitors, LCD monitors and laptop computers as covered devices. These CEDs are currently subject to the fees at the point of purchase of the device. DTSC adopted additional emergency regulations in December 2004 to add plasma and LCD TVs to the list of covered devices. These devices were subject to the fees as of July 1, 2005.

- Authorizing Recycling Facilities
 To date, DTSC has authorized, and IWMB has approved, 48 recycling facilities and 423 collectors as eligible in the EWRA funded recycling program.

- Alternative Management Standards Regulations
 Emergency regulations were adopted in July 2004 for the initial implementation.

 SB 20 granted DTSC authority to develop alternative management standards for electronic hazardous wastes. These regulations provide authorization to most recyclers for their activities in managing the electronic wastes, activities that would otherwise require a full hazardous waste facility permit. For those recyclers that perform more extensive processing (e.g., recyclers that use heat or chemicals in their process) hazardous waste facility permits will still be necessary. These emergency regulations were readopted as emergency regulations in June 2006 and are expected to be adopted as final regulations by the end of 2006.

 If necessary, subsequent regulations will be adopted to address the expansion of devices covered under the bill.

- Enforcement Activities
 Each recycling facility participating in the SB 20 program must be inspected annually and be in compliance with hazardous waste statutes and regulations to be eligible to receive funds from the EWRA's reimbursement fund. DTSC has conducted annual inspections at each recycler, re-inspected facilities which had major violations to insure they have come in to compliance, and

conducted inspections in response to complaints from the public or other facilities. The following summarizes these inspection and enforcement activities

Over the past two years, DTSC has conducted 123 inspections of recycling facilities seeking reimbursement under the EWRA (72 in 2004/05, and 51 in 2005/06). The increased number in the first year includes reinspections of facilities, because a facility cannot be reimbursed from the EWRA reimbursement fund unless it is verified to be in compliance. In addition DTSC has investigated 23 complaints. Based on these inspections and investigations, DTSC has completed enforcement actions at 13 recycling facilities and has three cases pending. These facilities had more serious violations relating to either releases of hazardous waste to the environment or problems with their financial assurance and financial responsibility requirements.

In FY 06/07 DTSC, in conjunction with CIWMB, will be investigating potential fraud cases. With $70 million in fees collected thus far, there are significant opportunities for unscrupulous "recyclers" to try to defraud the State.

- Stakeholder Workshops
 DTSC has met numerous times with various stakeholders involved in the implementation of the EWRA. DTSC established and met with a workgroup comprised of manufacturers, recyclers, and environmental groups to discuss the technical issues related to the scope of covered electronic devices identified in the bill. Additionally, DTSC, in conjunction with the CIWMB, has held six statewide public workshops in 2003 and 2004 to address EWRA implementation and to obtain input from all affected stakeholders.

- Outreach and Education
 DTSC developed fact sheets regarding the scope of CEDs and the bill's export requirements. DTSC met with various stakeholders to discuss their concerns and interests in implementation efforts. DTSC continues to update and modify its web site to make provide information on proper electronic waste management.

 In November and December 2004, DTSC hosted four training and outreach workshops throughout the state for collectors and recyclers of electronic wastes to assist them in preparing for the implementation of the EWRA. Approximately 300 collectors and recyclers attended the workshops.

 The workshops provided training and information on managing universal waste electronic devices (UWEDs) and cathode ray tube materials (CRT), and becoming authorized to treat these materials under the universal waste regulation. Information was also provided by the IWMB on becoming an approved recycler under the EWRA.

 DTSC worked with the CIWMB to develop a new web site, www.eRecycle.org, which is focused on providing information for California consumers who wish to know how and where to recycle their e-waste and how the fee system of the EWRA works. Additional Public Service Announcements for TV and radio featuring prominent celebrities are currently under development.

 DTSC continues to speak at numerous conferences and professional association meetings to assist stakeholders in implementing the EWRA.

- State Agency Coordination
 DTSC and the CIWMB formed an "e-team" from the inception of the EWRA. Since then, DTSC and CIWMB staff have met weekly to coordinate on implementation issues such as planning and conducting stakeholder workshops, developing regulations, develop procedures to share information on collector and recycler authorization and approvals, coordinating on legal issues, responding to various stakeholder groups and developing clear and consistent outreach and education materials. These efforts have resulted in a unified and effective process for implementation of the EWRA.

 DTSC and the CIWMB have developed a procedure to track the status of collectors and recyclers who wish to be authorized by DTSC and approved eligibility for funding by the CIWMB.

 DTSC is also coordinating with the Board of Equalization and the CIWMB to insure that questions from manufacturers, retailers and consumers regarding which devices are CEDs are directed to DTSC and answered. DTSC, CIWMB and BOE meet every other month to address EWRA implementation issues.

- Restriction of Hazardous Substances (RoHS)
 By January 1, 2007, DTSC plans to adopt regulations to ban the sales of covered electronic devices that are banned in the European Union (EU). DTSC continues to meet with international electronics manufacturers and representatives from the EU while monitoring Europe's implementation of the RoHS Directive.

 The RoHS regulations will mirror the EU's requirements specifying the Maximum Concentration Values for metals in Covered Electronic Devices and will adopt the same exemptions as put in place in the EU.

B) Has the department listed any new electronic devices as "covered devices?" What is the department's schedule for testing devices to make this determination?

Not yet. DTSC is in the process of testing additional video display devices during 2006 to determine which devices will be added to the list of CEDs. DTSC plans to evaluate portable DVD players because they are not currently designated as CEDs, but are similar to already listed covered electronic devices. If appropriate, DTSC will add these devices to the list of CEDs via regulations. The EWRA establishes specific time frames for adopting new devices as CEDs. Devices which are added to the list prior to the end of any given calendar year are subject to associated fees on July 1 of the following year. Thus, any CEDs adopted prior to the end of 2006 will be subject to the EWRA fees in July of 2007.

Brownfields are urban properties that are contaminated, or thought to be contaminated, and are underutilized due to perceived remediation costs and liability concerns. There is a strong interest in the Legislature in cleaning up brownfields, "recycling" those lands, and reusing them for new infill housing and commercial development.

Question #10. *A) What is the status of the department's implementation of AB 389 (Montanez, Chapter 709, Statutes of 2004), the Brownfields California Land Reuse and Revitalization Act of 2004? Please describe the steps the department is taking to implement the law.*

Status of implementation of AB 389

Since its enactment, DTSC has been working with Cal/EPA and the Water Boards to develop Fact Sheets, Questions and Answers, Application Forms, and a Draft Model Agreement to implement this new law. Further, DTSC and the Water Boards regions have identified key persons to contact with questions about the program.

In early 2005, staff and key program managers from Cal/EPA, DTSC and the State and Regional Water Boards met biweekly (via teleconference) to work on joint development of the various documents, discuss implementation issues, prepare for workshops and presentations, etc.

A series of workshops were held in Sacramento, Los Angeles, and Oakland for potential applicants, their consultants and other interested parties. At these workshops, a comprehensive overview of AB 389 was provided.

Information about AB 389, including the fact sheet, application format and Questions and Answers are posted on Cal EPA's website. A Draft Model Agreement is also posted and both DTSC and the water boards work with the applicants to continuously improve it.

The MOA is being used to determine lead state regulatory oversight agency for those wishing to enter into AB 389 agreements.

B) How many parties made application to the department to use the law? How many have actually entered into agreements?

DTSC has received many inquiries regarding use of the California Land Reuse and Revitalization Act of 2004. These inquiries have been received in all of our Regional Offices, and indicate a relatively high level of interest in the program.

DTSC is currently working on 12 agreements under AB 389. Four of those agreements have been signed, four agreements are nearing completion and are close to signature, and 4 additional agreements are in the beginning stages of negotiations.

Question #11. *Please describe any other steps DTSC is taking to clean up brownfields.*

Governor Schwarzenegger's Environmental Action Plan highlights the importance of cleaning up California's brownfields. These sites are harmful to our air, our water, our health, and our economy. They prevent many communities from experiencing the quality of life that many Californians take for granted. These sites need to be put back into productive use to protect and preserve California's environment and to be returned to our tax rolls as economic assets.

DTSC is pursuing a variety of initiatives to affect the Governor's goals:

- Programmatic Focus
 DTSC currently administers nine different programs to facilitate the cleanup and reuse of Brownfield sites. These programs represent a combination of legislative and administrative initiatives and include the Voluntary Cleanup Program, the Redevelopment Agency Environmental Oversight Program, Prospective Purchaser Program, California Land Environmental Restoration and Reuse Act (SB 32), California Land Reuse and Revitalization Act (AB 389), Site Designation Program, Private Site Manager Program, CLEAN Loans Program and the Expedited Remedial Action Program. Each of these programs is tailored to particular types of applicants or sites.

- Information Resources
 DTSC makes information on its various brownfields programs and brownfields tools broadly available on its website, and distributes information in the form of Fact Sheets, news articles, technical publications and other media. DTSC uses these information sources to reach parties that may be otherwise unaware of the opportunities to clean up a site or assess a site through voluntary means as opposed to using a traditional enforcement approach. In addition, these information sources help parties better understand the cleanup requirements and steps necessary to prepare a site for redevelopment and reuse.

- EnviroStor Online Database
 One of DTSC's most significant brownfields information resources is its recently unveiled EnviroStor database (publicly available on DTSC's web site). Through EnviroStor, anyone can access current information on all of our former and currently active cleanup sites including approved documents, upcoming activities, and maps for specific sites or general areas. We are currently adding information on permitted facilities and RCRA corrective action sites to the EnviroStor database so that the public will be able to get information on the full range of DTSC sites and facilities through one source. This database also provides us with a powerful data analysis tool, allowing us to compare our processes and decisions across a broad spectrum of sites, and helping us to identify impediments or opportunities for streamlining.

- Process Improvements
 As mentioned earlier, DTSC recognizes that local government and private investment in brownfields is essential to addressing the State's brownfields. DTSC recognizes that there are many aspects of the cleanup processes it implements that contribute to uncertainties and costs at brownfields that in turn discourage their cleanup and redevelopment.

DTSC understands the importance of making its cleanup and decision making process transparent and predictable so that brownfields investors and the public can make informed decisions about these properties. DTSC is also committed to continuing to work with its many stakeholders to identify ways in which we can improve our efforts and streamline the processes by which brownfields are cleaned up so that these sites can be returned as community and economic assets.

- MOA
 Effective implementation of the MOA is a critical element for the cleanup of brownfield sites. By designating the appropriate lead agency at the outset of a project, and identifying a comprehensive set of requirements that will satisfy the regulatory concerns of both state agencies, we are providing certainty to these parties that they are working with only one agency and will not be subjected to project "surprises" or unanticipated investigation or cleanup requirements that could potentially delay a decision or add costs.

- Targeted Site Assessments
 The DTSC uses a significant portion of its annual State Response Program grant from U.S. EPA to conduct site assessments for local and nonprofit agencies. This grant program is administered in collaboration with the State and Regional Water Boards. Information from the site assessments conducted by DTSC contractors with federal funds assists local agencies and nonprofits in making decisions regarding whether to pursue cleanup of brownfield sites.

- Brownfields Technical Guidance
 DTSC is developing and plans to disseminate guidance on the site assessment and cleanup process for brownfields, including guidance on presumptive approaches or remedies for common contaminants and site conditions. Development and dissemination of such guidance, including case studies of successful cleanups for residential and commercial scenarios, allows DTSC project managers and brownfields project proponents to learn from successful projects and not have to "reinvent the wheel" with each new project.

- Brownfields Funding
 DTSC continues to seek additional sources of funding to provide additional resources and incentives to address California's brownfields. DTSC developed or was in the process of developing financial assistance programs within the past five years that have remained unfunded due to budget constraints. Specific programs that would benefit from additional funding include:

 Cleanup Loans and Environmental Assistance to Neighborhood (CLEAN) Program, DTSC continues to look for ways to fund its CLEAN Program, a low-interest loan program designed to provide loans for the cleanup of hazardous materials where redevelopment is likely to have a beneficial impact on the property values, economic viability and quality of life of the affected community. DTSC was able to issue loans on five brownfield projects (totaling approximately $5 million) before its funding was removed. Individual CLEAN loans would range from $500,000 to a maximum of $1.5 million. Regulations were adopted and loans were issued totally approximately $5 million. The program is currently idle because funds were withdrawn.

Financial Assurance and Insurance for Redevelopment (FAIR) Program
The FAIR Program is intended to make environmental insurance products designed to provide liability protections for brownfields developers and lenders that invest in brownfields. It is modeled after the successful Massachusetts program, and consists of a pre-negotiated package of discounted environmental insurance products, and subsidies to offset the costs of premiums and deductibles.

- Measurements of Success
 DTSC is committed to develop clear, tangible goals and objectives to measure its brownfields efforts, as well as to gauge the success of the various brownfields efforts being pursued throughout California.

DTSC is the lead agency for cleanup of the so-called BKK site in the City of West Covina. The Department requested expenditure of General Fund monies at this site instead of requiring parties responsible for the pollution at the site to pay.

Question # 12. *Please explain why this decision was made.*

DTSC did not request General Fund monies *instead of* requiring potentially responsible parties (PRPs) to pay for the site. Rather, DTSC requested General Fund monies to support emergency response activities at the site while DTSC *simultaneously* pursued enforcement and cost recovery from Potentially Responsible Parties (PRPs). Additionally, DTSC sought private funding for the site in 2003/ 2004, before it sought General Fund monies for its emergency response action in late 2004.

Over the past several years, DTSC has undertaken four different types of actions to secure private funding for care of the BKK Facility. In actions it took before November 2004, when the BKK Corporation (BKK) ceased taking care of the site, DTSC arranged for approximately $2.6 million to be provided to BKK for care of the site and secured $43 million in insurance funds. Since November 2004, DTSC has recovered approximately $6.5 million from private parties and CalTrans (identified as the largest contributor by volume to the BKK site). These actions are summarized in chronological order below.

A) In 2003/04, DTSC sued BKK and negotiated an agreement with the City of West Covina, which together preserved approximately $43 million of insurance funds for closure and post-closure care of the Class I and Class III landfills.

B) In early 2004, DTSC became aware that Washington Mutual Bank (WaMu) is the successor to a prior owner/operator of the Facility. DTSC requested WaMu to voluntarily take responsibility for care of the Facility in February/March, 2004. From April through September, 2004, WaMu provided BKK with approximately $2.6 million, in the form of a loan, to operate the Facility. WaMu ceased funding BKK as of September 30, 2004.

C) In December, 2004, DTSC issued an administrative order to 51 PRPs, including BKK and WaMu, to conduct operation, maintenance and repairs at the site. That order also sought to recover the State's costs. These and other legal actions do not usually bring rapid results, and in the meantime public and private funds are necessary to continue the essential activities that protect public health and safety. As a result of this order, DTSC obtained funding from three groups of PRPs. First, between November 2004 and December 2005, DTSC obtained $4.5 million from the largest group of PRPs that received the administrative order (known as the "Settling Defendants"). Second, by the end of 2006, DTSC will have obtained a total of approximately $1.28 million from another PRP group. Third, DTSC obtained $706,000 from Caltrans.

D) Most importantly, DTSC negotiated a Federal Consent Decree with the Settling Defendants, which the United States District Court entered in March, 2006. The Consent Decree required the Settling Defendants to reimburse DTSC for certain pre-March 2006 costs at BKK. Second, it required the Settling Defendants to manage most of the day-to-day operations at the site and conduct certain special projects until March 2008. Third, it required the Settling Defendants to reimburse DTSC $50,000 per month for a portion of its post March 2006 oversight costs, for a total of approximately $1.2 million toward oversight during the term of

the Consent Decree. Fourth, it provides that DTSC and the Settling Defendants will cooperate toward recovering costs from other PRPs. Fifth, the Consent Decree provides that it is merely a first step, and that DTSC and the Settling Defendants should cooperate towards negotiating a successor agreement.

DTSC had to request General Fund monies to initiate the emergency response action at the BKK Facility due to the fact that BKK gave short notice to DTSC in October 2004 that it would not have the financial ability to operate the Class I landfill and leachate treatment plant (LTP) beyond the middle of November 2004. Continuation of these activities is essential to prevent the release of unsafe levels of landfill gases and leachate and to ensure that the Class I landfill, LTP and many other systems are properly maintained, repaired and replaced as needed. This short notice from BKK precluded the option of identifying and pursuing PRPs (to an extent beyond what DTSC had already done) before DTSC had to initiate its emergency response. Furthermore, it usually takes at least a year or more to carry out that type of cost recovery action, so there was not enough time for DTSC to secure adequate private funding before it was necessary to commence the emergency response action. DTSC also had to request General Fund monies because the emergency response action was projected to cost several million dollars, which was well beyond DTSC's annual emergency response budget of $874,000 per year for off-highway occurrences. By undertaking the emergency response, DTSC averted any public health risk similar to the one that occurred in 1984, which required numerous residences to be evacuated and residents relocated until risks were abated.

Question # 13: *The department has known the identities of the largest contributing parties for many years. Why has the department still not sought cost recovery from those parties?*

DTSC has sought and continues to seek cost recovery and performance of essential activities from potentially responsible parties (PRPs) during the past several years. On December 2, 2004, DTSC issued an administrative enforcement order to approximately 51 responsible parties, which required them to conduct operation, maintenance and repairs, *and* which sought recovery of the State's costs. As a result of that order, one large group of PRPs, known as the Settling Defendants, paid $4.5 million to reimburse DTSC's response costs at the BKK site. Also as a result of that order, DTSC obtained $1,275,000 from another group of private PRPs. Additionally, DTSC has obtained $706,000 from Caltrans (the largest-volume generator PRP). Finally, as a result of the order, DTSC entered into the Federal Consent Decree, which requires the private PRPs to conduct work worth millions of dollars and pay DTSC $50,000 per month toward its oversight costs. DTSC will continue to seek to recover costs from PRPs as part of any additional administrative or judicial actions.

DTSC did not have an independently verified list of large volume generators until the last quarter of 2004. To use scarce enforcement resources to utmost advantage, DTSC and the U.S. Environmental Protection Agency (U.S. EPA) do not generally pursue generator PRPs at sites where the current owners or operators, who have the primary legal responsibility for site operation and maintenance, are still actively carrying out their responsibilities. In the first half of 2004, DTSC and the U.S. EPA cooperated to have a contractor prepare a preliminary list of the largest generators, based on four years of DTSC's manifest data. Once BKK announced that it could no longer afford to care for the Class I landfill and LTP in October 2004, DTSC actively sought to verify the contractor's preliminary information, which we then used to develop a list of the largest generators.

As for more historic data, the BKK Class I landfill operated from 1963 to 1984, but the requirement to use the hazardous waste manifest only became effective in 1980. Information about generators prior to 1980 will have to be based on BKK's own records, which are in approximately 2000 boxes containing approximately 4 million pages. These boxes were stored in BKK's warehouse until DTSC recently took possession of them and placed them in a secure records management facility in the West Covina area. For further enforcement efforts, DTSC must have a comprehensive database that allows for sophisticated searching and data manipulations. Using these documents and other sources of information to conduct a comprehensive PRP search that addresses the entire BKK Class I landfill operating history from 1964 to 1987 will be very costly and require years to complete.

Now that a PRP group is on the site conducting most of the emergency response work, at least through March 20, 2008 DTSC and U.S. EPA will work to identify additional PRPs and seek to execute a long-term consent decree that will address stabilization of the Class I landfill and associated facilities and operation and maintenance in perpetuity. The Consent Decree contemplates that the Settling Defendants will add parties to their group and/or recover funds from other parties. To that end, the Settling Defendants are conducting their own PRP study and have already invested substantial resources in that effort. DTSC is currently studying whether DTSC can rely on the Settling Defendant's database or whether it should invest a comparable amount of money in a state PRP study. DTSC cannot rely on the Settling Defendants' database unless DTSC can verify the accuracy of the database. Private and public PRPs that do not belong to the Settling Defendants' group, particularly smaller companies, will look to DTSC for assurance that the Settling Defendants are not seeking an unreasonable amount of money. DTSC is exploring whether there are statistical or other techniques to provide an outside, objective verification of the Settling Defendants' database.

Native American tribes and other groups have expressed concerns about the department's actions to allow the construction of a hazardous waste treatment facility by PG&E at a sacred site of the Ft. Mojave Indian Tribe near Topoc.

Question #14. *A) Please explain the history of the department's process for permitting this facility.*

DTSC and PG&E entered into a Resource Conservation and Recovery Act (RCRA) Corrective Action Consent Agreement in February 1996 (Agreement). On August 11, 2003, DTSC was designated as Administering Agency pursuant to Chapter 6.65 of the Health and Safety Code. Pursuant to the Agreement and as the lead agency for investigation and remediation of the site, DTSC has required PG&E to conduct a number of interim measures to contain the chromium plume and to prevent it from reaching the Colorado River.

During the 1999-2000 timeframe, DTSC did not have sufficient site characterization information to fully understand the complex hydrogeologic conditions at the PG&E Topock site, especially in the vicinity of the floodplain of the Colorado River. Until January 2004, the ground water monitoring network installed at the site suggested that the hexavalent chromium plume, while near the Colorado River, was not an immediate threat to the river. Based on that understanding, DTSC's plan at the time was to complete the site investigation and select a final remedy for the project with a full environmental impact evaluation in accordance with the California Environmental Quality Act (CEQA) procedures including, but not limited to, an Initial Study and all subsequent environmental planning documentation. In 2004, based on increased knowledge of the plume gained through the installation of additional monitoring wells, DTSC determined that an emergency existed due to the proximity of the hexavalent chromium plume to the Colorado River.

Interim Measures (IM) No. 1 was approved by DTSC on January 22, 2004 after a newly installed deep groundwater monitoring well (MW 34-80), located approximately 60 feet from the edge of the river, detected 38 parts per billion (ppb) of hexavalent chromium. IM No. 1 required PG&E to install an extraction well at the heart of the hexavalent chromium plume, initiate pumping to reverse the flow of groundwater away from the Colorado River, and treat the extracted water at a temporary treatment system to be located on Bureau of Land Management (BLM) property. DTSC required IM No. 1 in order to prevent impacts to the Colorado River.

IM No. 2 was approved by DTSC on February 3, 2004 when the concentration of hexavalent chromium in the same newly installed deep well (MW-34-80) was detected at 111 ppb, exceeding the California drinking water standard of 50 ppb of total chromium. DTSC required PG&E to immediately convert the existing monitoring wells at MW-20 for extraction until a dedicated extraction well could be constructed. Under IM No. 2, PG&E treated extracted groundwater in a treatment plant located on Bureau of Land Management (BLM) property and the extracted groundwater was subsequently trucked to a permitted disposal facility in Los Angeles. PG&E began extraction of contaminated water on March 8, 2004. IM No. 2 treatment plant operations continued until IM No. 3 became operational in July 2005.

In June 2004, DTSC determined that an increased extraction rate of up to 135 gallons per minute (gpm) was necessary to maintain a hydraulic gradient away from the river in response to seasonal fluctuations of the Colorado River between the months of December and January. The calculations were based on United States Bureau of Reclamation projections of water releases from Davis Dam upstream from the site and a numeric model developed to predict site conditions. Under the scenario of increased pumping,

off-site trucking of the extracted water became infeasible as there was insufficient storage space for water at the IM No. 2 treatment plant. In order for PG&E to manage the additional extracted water, PG&E proposed construction of a water treatment system and recommended three separate water disposal options. IM No. 3 and the associated California Environmental Quality Act (CEQA) Notice of Exemption (concluding that this measures was necessary to prevent an emergency situation) was approved by DTSC on June 30, 2004, in order to conduct increased extraction necessary to protect the Colorado River. IM No. 3 required PG&E to construct a new water treatment system to reduce the contamination in the extracted water and polish the treated water for either injection back into the aquifer, discharge into the Colorado River, or be reused at the Topock Compressor Station. The water treatment system required a Permit By-Rule issued by the San Bernardino County CUPA. Under the initial proposal, PG&E estimated that the new treatment system would be operational by October 2004; however, due to various delays, including cultural resource assessments, permitting requirements, and construction delays, the completion was delayed. The IM No. 3 treatment system began operations on July 17, 2005.

Beginning in 1998 DTSC has met periodically with the five federally recognized Indian tribes with lands that border the Colorado River as it flows through Nevada, California and Arizona. These five tribes (from north to south) are the Fort Mojave Indian Tribe, Chemehuevi Indian Tribe, Colorado River Indian Tribes, Quechan Indian Tribe and the Cocopah Indian Tribe (see Table 1 – Detailed History of Meetings, Briefings and Correspondence with Indian Tribes 1998 to 2005).

On June 22, 2004, before it issued the approval of IM No. 3, DTSC visited the two closest tribes, the Fort Mojave Tribe and the Chemehuevi Tribe, to discuss the Interim Measure No. 3 treatment plant proposal. Since DTSC does not have a formal State to Tribal Nation consultation process, a condition of the Interim Measures No. 3 approval was for PG&E to work with the United States Bureau of Land Management (BLM) to identify biological and cultural resources associated with the proposed project. Before the construction of the treatment plant, BLM took the lead and completed the formal Nation to Nation consultation with local tribes as required under Section 106 of the National Historic Preservation Act. Before the construction of the treatment plant, DTSC also inquired with the State Historic Preservation Officer to identify any known cultural or sacred features at the proposed treatment plant location as part of the proposed interim measure project. At the time DTSC approved IM No. 3, aside from the portion of the tribal maze located adjacent to the PG&E Topock Compressor Station, there were no registered cultural or sacred sites on record at the project area. Subsequent to approval of Interim Measure No. 3 and prior to implementation of construction activities, DTSC, BLM, and PG&E held several meetings, briefings, and site tours with tribal representatives to provide information regarding the proposed treatment plant facility and the project in general.

B) What is the status of this facility?

Interim Measures (IM) No. 2 began in March 2004 with extracting and treating 15 gallons per minute (gpm) of contaminated groundwater. By October 2004 the extraction rate was increased to approximately 70 gpm; this rate was continued until the end of IM No. 2 operations in July 2005.

Interim Measure (IM) No. 3 treatment plant began operations on July 17, 2005 with the goal to prevent further migration of the hexavalent chromium plume toward the Colorado River. Currently, the IM No. 3 facilities include four groundwater extraction wells, conveyance piping, a groundwater treatment plant, and an injection well field for the discharge of treated groundwater. Approximately 90 gallons per minute (gpm) of contaminated groundwater was extracted the first few months of IM No. 3 operations.

Since December 2005, the IM No. 3 system has been operating at approximately 135 gallons per minute (over 190,000 gallons per day). Currently, approximately 90% of the extracted water is re-injected into the aquifer after treatment; 10% becomes concentrated brine from the reverse osmosis system and is trucked to U.S. Filter Corporation in Los Angeles as non-hazardous waste. In addition, one to two truckloads per month of sludge (generated from the treatment process) containing non-RCRA hazardous waste levels of chromium is disposed at the Chemical Waste Management Kettleman Hills facility. Through June 2006, over 84 million gallons of groundwater have been treated by IM No. 2 and 3 resulting in removal of more than 3,000 pounds of chromium from the groundwater. Currently, on average, IM No. 3 treats over 5 million gallons of contaminated water per month. Regular monitoring of Colorado River water, as well as specialized monitoring of groundwater entering the river through pores in the river sediments, confirms that chromium is not entering the river.

The IM No. 3 system has achieved the goal of maintaining a westward (landward) groundwater gradient away from the Colorado River on the floodplain. This conclusion is based on groundwater level measurements recorded every 30 minutes from a network of 50 monitors (transducers) installed in wells located in and around the floodplain area. Particle tracking estimates based on modeling suggest landward groundwater flow rates on the order of 8 feet per month in the vicinity of the river. Overall hexavalent chromium concentrations in most of the floodplain wells are stable or decreasing. The exceptions are monitoring wells MW-34-100 (installed February 2005) and MW-44 (installed March 2006) located 65 feet and 150 feet away from the river, respectively, which have had upward concentration treads since the wells were installed. In May 2006, MW-34-100 reported hexavalent chromium concentrations of 960 parts per billion (ppb) and MW-44-115 reported 1,610 ppb. The California Maximum Concentration Level (MCL) for chromium is 50 ppb. Both these well clusters are within the zone of plume capture resulting from IM No. 3 groundwater extraction. The upward concentration trend is likely caused by the effect of non-homogeneous hexavalent chromium concentrations in the immediate vicinity of the wells and of groundwater extraction which is drawing groundwater with higher hexavalent chromium concentrations through the zone screened by the well. Groundwater moves very slowly, even under the influence of the IM No. 3 groundwater extraction. Under the gradients induced by IM No. 3 pumping, groundwater in the vicinity of MW-34-100 and MW-44 has moved approximately 100 feet towards the extraction wells over the last year. In February 2006, DTSC required installation of the fourth IM No. 3 groundwater extraction well, PE-1, to enhance hydraulic capture in the immediate vicinity of MW-34-100 in response to the hexavalent chromium concentration trends.

C) Has the department fully explored alternatives to this facility at this site?

Prior to requiring Interim Measures No. 1, 2, and 3, DTSC evaluated several alternatives to control migration of the hexavalent chromium groundwater plume under interim measures. These included construction of a subsurface barrier wall, in-situ treatment of the chromium, and groundwater extraction. However, due to the remote location of this site, the sensitive lands that surround it and the urgency to control the plume to protect the Colorado River, DTSC determined the only viable immediate option was extraction and treatment of the contaminated groundwater plume. In addition, DTSC evaluated various options for managing treated water including discharge to the Colorado River, injection wells, infiltration ponds, new evaporation ponds, trucking or piping to the Topock Compressor Station, and trucking to an off-site receiving facility.

If PG&E submits a proposal for an alternative location for the IM No. 3 treatment plant and other equipment prior to selection of the final remedy, DTSC has committed to promptly evaluate PG&E's

proposal. If the proposal is in compliance with applicable laws, regulations, and requirements and is consistent with effectively remediating the contamination, DTSC will prepare the appropriate California Environmental Quality Act (CEQA) documents and public notice the proposal as expeditiously as possible.

It is DTSC's goal to utilize its best efforts to provide an expedited time frame for a decision on a final remedy for the PG&E Topock site. In addition to the Interim Measures, PG&E is in the final stages of defining the extent of contamination groundwater contamination and will proceed with the evaluation of a permanent solution and propose a comprehensive remedy for the site. PG&E should complete the Groundwater Investigation Report by January 2007 and the Soil Investigation Report by June 2007. PG&E is currently conducting a regional chromium background study, a chromium isotope study, and a human and ecological health risk assessment to support development of clean-up goals for the site. PG&E is also conducting pilot studies of enhanced in-situ chromium reduction techniques to accelerate clean-up of the hexavalent chromium plume as part of the final remedy selection process. PG&E will compile all relevant data and submit a Corrective Measure Study (evaluation and proposal of cleanup alternatives) Report to DTSC for review and selection of the final remedy at the site. The proposed final remedy will be fully evaluated and comply with the California Environmental Quality Act (CEQA) process with involvement of all stakeholders, including the sovereign tribal nations. DTSC has committed to preparation of an Environmental Impact Report (EIR) for the final remedy and anticipates completion of a contract with a contractor to complete the EIR by the end of June 2006. At this point in time, DTSC anticipates public notice of the proposed final cleanup plan by July 2008.

Both federal and state laws require hazardous waste facilities to have financial assurances in place to ensure proper maintenance and cleanup of those sites. The department continues to grant hazardous waste permits to facilities without adequate, and in some cases, with no financial assurances in place as required by both federal and state hazardous waste laws.

Question #15. *Please explain why DTSC continues to issue those permits.*

DTSC recognizes the importance of protecting California from the financial burden of hazardous waste industries, and ensuring that those companies set aside adequate resources to pay their obligations. The Legislative Analyst Office recently prepared a report on this very important topic which pointed out a variety of key issues pertaining to both solid and hazardous waste facilities.

DTSC requires financial assurance be demonstrated before issuing facility permits, and knows of no facility that has been issued a hazardous waste facility permit that has not provided some form of financial assurance of a type allowed under state and federal hazardous waste regulations. Ensuring adequacy of financial assurance is a complex issue, however, and facilities are evaluated for financial assurance on a case by case basis.

The most important element of financial assurance is the accuracy of cost estimates. To ensure that sufficient resources will be available when they are needed, DTSC strives to review cost estimates (for closure, post closure and corrective action) to make sure that they reflect the true cost of the activity, and adjusts those estimates for inflation annually.

Independent Review

Since 1999, DTSC has been independently reviewing closure, post-closure, and corrective action cost estimates. To date, DTSC has reviewed 159 of the 162 cost estimates. Of the 159 independent cost estimates performed by DTSC, 146 have resulted in facility owner/operators revising the amount of their financial assurances to correspond to the amount of the cost estimate determined by DTSC's review process.

This independent review process has resulted in a significant increase in the total amount of financial assurance made available. When the independent cost estimate reviews were begun in 1999, the amount of financial assurances for facilities regulated by DTSC totaled approximately $800 million. As of June 30, 2005, that amount had increased to approximately $1.8 billion.

Cost Estimates for Corrective Action

Financial assurance for corrective action has always posed a challenge, primarily with the estimation of costs. For a variety of reasons, DTSC has not required the provision of financial assurance until after site investigatory work has been completed and a remedy has been selected. Prior to this point in the corrective action process, estimating the cost of remedial work is little more than a guess since the nature and extent of contamination, which is the basis of remedy selection, has not been defined.

In some instances, years can elapse between the realization that some sort of corrective action will be required and the completion of investigation and selection of an appropriate remedy. This results in no financial assurance for remediation costs for a substantial period of time when there is an absolute certainty that some amount of remedy costs will be necessary.

To account for this, DTSC has been taking steps to identify circumstances where the estimation of financial assurance before remedy selection is feasible, such as the performance of interim cleanups to address immediate problems. Additionally, DTSC is exploring ways to require some measure of financial assurance prior to remedy selection. This could take the form of calculating "estimated" remedial costs up front based upon such factors as the type and size of facility and whether soil and/or groundwater contamination is likely to exist. The estimate can then be refined and amended as more data is available as the site investigation phase proceeds.

Regulatory Changes

Because of the importance of these financial assurance requirements, within this past year, DTSC has held a series of public workshops to gather information from stakeholders concerning the variety of issues surrounding financial assurance and the mechanisms that are available and allowed under current regulations. Based on public comments and feedback, DTSC has been drafting changes to its regulations which, if implemented, would result in a more effective regulatory scheme and lessen the risk of use of public funds to complete closure, post-closure, or corrective action activities at permitted facilities in the future. Some key elements of the changes being considered include:

- Strengthening the financial test. Proposals include:
 - Increase the minimum net worth to $20 million
 - Require disclosure of all environmental obligations (irrespective of program),
 - Bond rating test use the most recent unsecured debt
 - Require additional financial assurance mechanism to cover % of cost estimate
- Improving financial assurance for corrective action. Proposals include:
 - Assess a "flat fee" for corrective action
 - Apply different financial assurance requirements for different facility type
 - Include costs for contaminated soil and an additional corrective action flat fee
- Requiring captive insurers to be "licensed" in California by the CA Department of Insurance

Facilities Predating Current Requirements

Although DTSC is considering a variety of improvements to its current financial assurance requirements, ensuring sufficient funds to address facilities whose operation predated current requirements can be challenging, as demonstrated by the BKK Landfill and other notable cases. Unlike operational facilities that can use operational revenue to purchase or fund financial mechanisms, for closed facilities there is no operational revenue, so funding must be obtained through other means, such as insurance claims or cost recovery. Regardless of the funding mechanisms, DTSC will continue its practice ensuring that adequate care and monitoring of these facilities continues uninterrupted.

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June 15, 2006

VIA U.S. MAIL

Ms. Nettie Sabelhaus
Senate Rules Committee
State Capital Room 420
Sacramento, California 95814-4900

Dear Ms. Sabelhaus:

Pursuant to the request of Mr. Don Perata in his letter to me of June 7, 2006, I am supplying the following information. First of all, my Form 700, Statement of Economic Interest, which I previously sent you dated March 27, 2006 has not changed. There are no changes to the statement as I have no reportable interests. I will now answer Mr. Perata's questions by repeating the question with my answers:

1. What do you hope to accomplish during your tenure as a member of the Boating and Waterways Commission? What goals do you have for the Commission and how will you accomplish them?

 I hope to continue my representation of the members of the boating community in the state of California during my tenure. The Commission provides an important function in reviewing loans and grants proposed by the Department of Boating and Waterways. I along with the other members of the Commission will continue to review these loans and grants for the benefit of the boating community of the state of California. I have no personal goal for the Commission, however, I hope we could expand boating education and remedy a few problem loans the Department has in its portfolio. I believe this can be accomplished by advising the Department of these problems and possibly working with other arms of the government to accomplish this.

2. How does the Commission carry out its role of advising the Department? Has the Commission developed a list of priorities and presented it to the Department?

 The Commission carries out its advisory role during public meetings held with respect to matters within its jurisdiction. Although no formal list of priorities have been assembled by the Commission, separate issues are discussed at each public meeting and instruction and consideration is from time to time requested of the Department.

3. How many loans or grants proposed by the Department has the Commission not approved?

 Since my initial appointment to the Commission, only one loan extension has been disapproved by the Commission.

4. What percentage of loans or grants are given to boating facilities located in state parks?

 The Commission is not charged with the responsibility of retaining percentages respecting who receives loans or grants. This information can be obtained from the Department of Boating and Waterways.

5. Are you aware of any favoritism involving waiting lists for boat slips? If so, what has the Commission done to address the issue?

 I am not aware of any favoritism involving waiting lists for boat slips. This issue will be raised at a future Commission meeting to see if a problem in fact exists. At this time, this is the first I have heard of this problem.

6. How do you see your role on the Commission in protecting the state's public trust resources? What types of mitigation does the Commission require for the acceptance of boating or waterways grants?

 I do not believe that the Commission has a large role in protecting the state's public trust resources. The Department of Boating and Waterways studies the areas where new boating ramps are built and works with other agencies to protect the state's public trust resources. If an obvious problem does exist, which problem has not been corrected by the Department, we would obviously bring it up at the Commission meeting on approval of the grant or loan. Occasionally the Commission has

requested local governments to participate more financially in grants.

If you should have any further questions or comments, please do not hesitate to contact the undersigned.

Sincerely,

Robert Y. Nagata

RYN:clf 83345.1



Est. 1977

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June 20, 2006

Nettie Sabelhaus, Rules Committee Appointments Director
Senate Rules Committee, California Legislature
State Capitol, Room 420
Sacramento, California 95814

Dear Director Sabelhaus,

In response to Mr. Perata's June 7, 2006, letter regarding my appointment to the Department of Boating and Waterways Commission, I submit the following:

A. The updated Form 700 dated March 29, 2006, is still valid as there are no changes to the statement.

B. Regarding the questions requesting a written response, please see the following:

1. What do you hope to accomplish during your tenure as a member of the Boating and Waterways Commission? What goals do you have for the commission and how will you accomplish them?

As a member of the Boating and Waterways Commission, I hope to provide, through our statutory duties, safe and convenient public access to California's waterways. My objective is to ensure that boating-derived funds are used in an effective, feasible, and appropriate manner for the development of environmentally-sound, public access boating facilities.

The strongest power of the Commission is its ability to provide or withhold consent to loans and grants made by the Department of Boating and Waterways. Historically, these have been loans to public entities for the construction and improvement of small craft harbors, loans to private marina owners for the construction of recreational marinas open to the general public, and grants to public agencies for the construction and development of boat launching facilities.

I hope to accomplish my duty as a Commissioner by carefully reviewing the feasibility of boating facility grant and loan projects and providing advice to the Department based on my experience as a marina owner and operator. Loans and grants can be conditioned, based on advice from the commission, to change the terms of the contract and acceptance of the grant or loan.

The Commission has established a policy that requires a Commission member to visit the location of all proposed grants and loans costing $500,000 or more and report back to the full Commission at a public meeting prior to consideration of the item for approval. This policy was made with the intent to make educated and informed decisions related to the approval of grant and loan projects.

In addition to the careful review of loan and grant projects, I also plan to enhance the public forum and transparency function of the Commission. The Boating and Waterways Commission offers the only regularly-scheduled public meetings for the boating community on statewide issues.

I plan to invite representatives of the statewide boating organizations and Southern California Marine Association, Northern California Marine Association, U.S. Coast Guard Auxiliary, U.S. Power Squadrons, California Boating Safety Officers Association, to attend Commission meetings on a regular basis.

This month in Ventura on June 27, 2006, I have requested that the Presidents of Recreational Boaters of California (RBOC), California Association of Harbor Masters and Port Captains (CAHMPC) and the Marina Recreation Association (MRA) be invited to give a short review of the issues their constituents may have regarding the Department of Boating and Waterways and how we might address them. All have said they or their representative will be addressing the commission.

I believe that this stakeholder function is critical. It allows persons from the boating community to address the Commission about important issues and Department programs. Without the commission, the ability of boaters to address state government and make their opinions known on a regular basis would be lost.

2. How does the commission carry out its role of advising the department? Has the commission developed a list of priorities and presented it to the department?

Each small craft harbor loan and boat launching facility grant is presented to the Commission for its advice and consent at a public meeting held in different areas of

California. The applicant, either a public agency or a business, is required to attend the meeting when the proposed project is presented to the Commission.

For the consent of small craft harbor loans to local agencies and private businesses, the commission reviews and provides advice on the following elements to ensure that the project is developed in a fiscally prudent manner:

- Ability of the borrower to repay the loan, project financial feasibility, market demand, sufficiency of collateral, vessel berthing rates and how they are computed, proposed berthing rate versus market rates, operation and maintenance practices, loan repayment and contractual terms and conditions.

For the consent of boat launching facility grants to public agencies, the Commission reviews and provides advice on the following elements:

- Demand for the facility, project costs, size and components of the facility, operation and maintenance practices, and cost to the boater to launch at the site.

In regard to advising the Department on all matters within the jurisdiction of the Department, the Commission has established, from time to time, committees on various program areas. For example, currently the Commission has a two-member legislative committee which can advise the Department or take recommend positions on legislative bills affecting boating.

In addition, the Department provides briefings to the Commission about Department programs and issues. The Commission can provide advice to the Department about these programs or can prepare a letter of support or opposition as appropriate.

The Commission has not provided a list of priorities to the Department; however, historically, the Commission has been most concerned with the ability of the applicant to repay the loan and operation and maintenance practices and costs. These are critical elements to ensure the protection of State monies and, by practice, the Commission has established these elements as the highest priority of its statutory responsibilities.

3. How many loans and grants has the commission not approved?

During the last ten years, no loans and grants have been denied by the Commission. However, if there are any problems with the loan or grant, the Commission has frequently voted to condition approval of the loan/grant or modify the terms of the contract between

the applicant and the Department. In addition, the Commission on several occasions refused to act until more information was provided and, thus, the project was carried over until the next meeting.

It should also be noted that at the Department staff level, when applications are initiated, some applicants are denied due to their inability to meet Department criteria. There is considerable due diligence on the part of staff prior to the loan request coming to the Commissioners. By the time the loan request comes to the Commission, the parameters to qualify have been aggressively vetted.

4. What percentage of loans or grants is given to boating facilities located in state parks.

The direct answer to this question is zero. The reason is that all boating facility infrastructure and improvement projects developed in State Parks are administered through the Department's Capital Outlay program as opposed to the Department's Local Assistance (grants and loans) program. The Commission is not charged with approving the Department Capital Outlay projects.

State Parks receives a very substantial share of available Department funds for recreational boating facility construction improvements. There are 463 lakes and waterways in California where public recreational boating is known to occur, many of which have received the benefit of public access facilities approved by the Commission. The Department budgets an average of 25 percent of available construction funds to make boating facility improvements in the six major State Parks with high concentrations of boating – Lake Oroville, San Luis Reservoir, Millerton Lake, Folsom Lake, Lake Perris and Silverwood Lake.

One could argue that State Parks is receiving more than a "fair share" of boating funds, given the fact that State Parks also receives $27 million in boater funds above and beyond the considerable construction funding provided through the Department's Capital Outlay program.

5. Are you aware of any favoritism involving waiting lists for boat slips? If so, what has the commission done to address the issue?

The Commission is aware of this issue and has discussed it when a proposed marina loan was presented to the Commission for its advice and consent. At that time, the Commission did not take a position on the issue. I agree this is an issue that needs to be

reviewed with possible action. In the future, the Commission plans to pay more attention to local practices that may lend towards favoritism for the renting of berthing spaces.

In accordance with its statutory duties, the Commission should ensure the letter of the law is complied. I have personally in public session challenged various marina operators as to their management practices and will continue to do so. While the issues seem to be segregated to the government managed public marinas, we will continue to probe the practices when applications come before us for loans. We may recommend some guidelines if we feel the practice is widespread.

6. How do you see your role on the commission in protecting the state's public trust resources? What types of mitigation does the commission require for the acceptance of Boating and Waterways grants?

The Commission supports the Department's mission statement which is:

> To provide safe and convenient public access to California's waterways and leadership in promoting the public's right to safe, enjoyable, and environmentally sound recreational boating.

The Boating and Waterways Commission protects the state's public trust resources by only approving projects that have satisfied the California Environmental Quality Act (CEQA), or else will condition approval upon the satisfying the requirements of CEQA. The Boating and Waterways Commission is not a regulatory body with the authority to require environmental mitigation on the project it approves. The Boating and Waterways Commission, however, approves funding all necessary environmental mitigation identified either through CEQA or the regulatory permit process that is necessary to construct the approved project. Mitigation can range from eelgrass replacement and the creation of offsite eelgrass banks to replanting of native oak trees in the project vicinity.

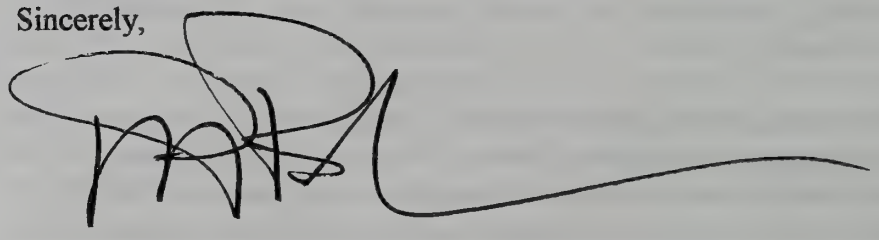
As you may know, I founded as General Chairman, the Clean Marinas California program (www.cleanmarinascalifornia.org) initially in San Diego and now state wide with over 40 marinas certified as Clean Marinas in the past two years. The certification program is administered by our industry with no government regulations except what is required on the books currently. We have no "pay-roll" and the cost to a marina is only $250 for each certification review.

There is an extensive 70 page manual that we developed that can be downloaded by anyone from our website. The program is shared willingly with other organizations in the state and now it is being reviewed nationally. Our program is the only national program that is not administered in some way by a government entity. We are proud that no public tax money is used for this program.

The Clean Marinas California program has certified salt water marinas, lake marinas, military marinas, private marinas, public marinas and even a Mexican marina. Our program has just been required for a marina in Coronado California (public/government managed) to be certified a Clean Marina in order to be approved by the Water Quality Control Board Region 9. This program might be something the Department would require in the future for loans to be approved or continued. I will be presenting a power point presentation to the Commission next week on June 27, 2006, at our Ventura meeting.

I trust these responses to your questions are sufficient. If they are not, please follow up with more inquiries.

Sincerely,



H. P. "Sandy" Purdon
President/CEO

CALIFORNIA LEGISLATURE

MEMBERS
JIM BATTIN
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SECRETARY OF THE SENATE
NETTIE SABELHAUS
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

February 28, 2006

Paul H. Betancourt
311 North Goldenrod Avenue
Kernan, CA 93630

Dear Mr. Betancourt:

As you know, your appointment to the Central Valley Regional Water Quality Control Board is subject to confirmation by the Senate. We have prepared the following questions to which we would appreciate your written responses. Please have this information in our office by March 21, 2006.

Statement of Goals

1. *What do you hope to accomplish during your tenure as a member of the Central Valley Regional Water Quality Control Board? What goals do you have for the board and how will you accomplish them?*

State and Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, yet these are considered part-time positions.

2. *Are state board and regional board staff available to assist you in better understanding some of the complex issues before you?*

3. *Do you have any suggestions on how staff might better assist you?*

4. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*

The Porter-Cologne Water Quality Control Act generally establishes the relationship between the state and regional boards. Regional boards usually set water quality goals in their basin plans, develop total maximum daily loads (numerical limits on the amount of pollution a water body can absorb), enforce permit and discharge requirements and state and federal water quality laws. However, regional board budgets are not reviewed individually by the Governor or the Legislature, and most regional board staffing decisions are made at the regional level, not at the state level.

The state and regional board structure has been criticized by both industry and environmental groups for being cumbersome and lacking accountability, efficiency, and transparency. Both sides note that major policy issues often are decided in the appeals process before the state board instead of through a consistent statewide policy established by the state board and implemented by the regional boards.

5. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how? Are there specific areas of operation such as budget allocations that you think would benefit from increased transparency?*

6. *Do you believe your regional board is adequately funded to enforce the state and federal laws you are charged with enforcing? Are you aware of existing legal requirements faced by your board that are not presently funded or proposed for funding?*

Water Quality Permitting

The federal and state clean water acts require permits to discharge pollutants from stormwater. In the past these permits have imposed best management practices on dischargers under the assumption that the use of those practices will result in water quality improvements. However, there is increasing evidence that best management practices do not always adequately protect water quality. Water quality experts have suggested that regulations governing permits be revised to require enforceable numeric limits, as is required of other sources of pollution. Supporters of numeric limits argue that they would make water quality permits more easily enforceable and transparent, and would be more efficient because permit holders could choose how to comply.

7. *What is your view about the efficacy of relying on a voluntary system of "best management practices" to protect the state's waters against polluted stormwater?*

8. *Would the use of numeric limits in stormwater permits be an improvement over permits that rely on "best management practices?"*

Enforcement of Water Quality Laws

In April of last year the office of the secretary of Cal-EPA reported to the Legislature on environmental enforcement and suggested that the state and regional water boards are among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never seek criminal penalties for serious violations, and generally do not aggressively pursue violators.

Hilmar Cheese Company, located in Merced County, is the largest producer of cheese in the world. Over the last fifteen years the company has been exceeding pollution limits set in its waste discharge requirement permits. Instead of enforcing the pollution limits, the board raised the amount of pollution allowed four times between 1990 and 1997. In 2005 the company was fined $4 million. Later the board staff negotiated a proposed $3 million settlement; Hilmar would admit no wrongdoing, and the company would be allowed to continue to pollute until sometime in the future when both sides could agree to new pollution restrictions. This settlement and two other option are still before the board.

9. *What is the status of the enforcement action against Hilmar Cheese Company?*

10. *What enforcement options do you believe provides the most effective tools for long-term violations of permit requirements?*

11. *It took 15 years for the enforcement of the company's pollution limits to rise to the level of a fine. How will you prevent that situation from occurring in the future? Is change needed?*

Agricultural Waivers

Current law requires regional water quality control boards to issue requirements on discharges of both point and nonpoint source pollution in order to protect the waters of the state, unless those requirements are waived pursuant to Section 13269 of the Water Code. That code section states that waivers from discharge requirements can be made if it is "in the public interest," a criterion that has been used in a number of different ways over the years. The agricultural waiver in the Central Valley has been among the state's most contentious.

The Central Coast and Los Angeles regional boards have adopted agricultural waivers that appear to be more transparent and that generate more publicly accessible information. The Central Valley board rejected a staff recommendation that would have made the agricultural waiver more closely resemble waivers of these other two boards. We would appreciate an update of your board's agricultural waiver.

12. *Would you explain the refusal of the Central Valley regional board to support the staff recommendation and would you explain how you voted on this question and why?*

Water Quality Monitoring

Water quality monitoring can provide the basic data necessary to determine the health of state waters and to establish priorities needed to improve water quality. Yet this activity seems to be chronically underfunded at the state and regional water board level.

Several years ago a legislatively mandated working group wrote to the state water board advocating adequate funds for the state's Surface Water Ambient Monitoring Program. The letter stated that such funds are "critical to implementing the state's other water quality programs effectively, and that they will more than pay off this investment in terms of future dollars spent more effectively on restoration and pollution prevention."

13. *What monitoring activities occur within the board's jurisdiction that are conducted by private dischargers, state agencies, or others? How are these activities funded and at what levels? Should water quality monitoring be a higher priority for the state and regional boards? What specific steps could your board take to make monitoring more effective?*

Cleanup of Polluted Waters

Governor Schwarzenegger has stated in his Environmental Action Plan that he will fully implement existing water quality programs, such as municipal stormwater permit programs and total maximum daily load programs.

Currently, regional water boards lag far behind their adopted schedules for cleaning polluted or impaired waters, and existing monitoring programs make it difficult to identify other waters that may be polluted.

14. *What schedule currently exists at the regional board for TMDL development? Is the schedule being met and if not, please specify what aspects of the schedule are unmet? What specific steps do you support to get your regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?*

15. *What steps would you take to implement identified pollution loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814

Thank you for your time and cooperation.

Sincerely,

DON PERATA

DP:KW:dc

Paul H. Betancourt

March 18, 2006

Senator Don Perata
Chair-Senate Rules Committee
State Capitol 420
Sacramento, California

Dear Senator Perata,

Thank you for your time and consideration regarding my appointment to the Central Valley Regional Water Board. Water quality is an important duty and responsibility which I take quite seriously.

Below are my answers to the questions you have sent. I will be glad to clarify any details that you wish.

Again, thank you for yout time and consideration.

Cordially,

Paul H. Betancourt

Statement of Goals

1] What do I hope to accomplish during I tenure?-

I hope to protect water quality in our region without compromising our economic development .

311 North Goldenrod Avenue Kerman, California 93630 (559)250-9243
Betancourtunlimited@juno.com

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MAR 21 2006

State and Regional Board Goals

2] Are state and regional staff available?
Yes

3] Do I have suggestions on how staff might better assist me?
No

4] Conflict of Interest training
-I have received 2-3 hours of conflict orientation from staff counsel Phil Wyles.
-I am aware of and a supporter of conflict of interest rules.
I recused myself at the November meeting since there was some question as to whether I was a discharger. We have worked to clarify my designation as a discharger. I have invited staff led by Bill Croyle to visit my farms and determine my status as a discharger. I have also worked with staff counsel Frances McChesney on the legal determination. Both Mr. Croyle's report and Ms. McChesney's report are part of the public record. I have no conflict with regards to the irrigated lands discharge waiver program.

5] Relationship between the State and Regional boards is clearly described by their founding documents. I have begun establishing relationships with State Board members and State Water board staff.
I don't see how the system could be any more transparent.

6] Is funding adequate?
One issue, the heritage mercury problem in the Delta by itself would absorb more money than is already in our budget. So, No, we are not adequately funded, nor do I think we ever will be. With scarce resources the best strategy is always to utilize funds where they will provide the greatest return. To put it more plainly I think we should focus on the largest problems first and focus our limited resources in funds, staff and information to solving those problems.

Water Quality Permitting

7] Best Managment Practices.
For Non-Point Source Pollution BMP's seem to be the best strategy.

I think there is a lot of resistance to the storm water discharge program because people do not understand the extent of the problem and their place in a solution. Let's make folks aware of a problem and engage them in the solutions.
I support BMPs as a reasonable strategy in cases where we have incomplete information. Where we have a specific problem and a clear information we can

regulate more specifically. In other cases I think it is important to engage and educate the public and potential dischargers to become part of the solution. Additionally, new technology and increased knowledge will help us create new BMPs over time.

8] Numeric limits in place of BMPs

I have not heard an argument that convinces me that numeric limits are superior to BMPs. Numeric limits can be important targets in the case of point source pollution. In the case of NPS pollution numeric limits and BMPs together can be a more effective solution.

Enforcement of Water Quality Laws

9] The status of the enforcement action against Hilmar Cheese was reviewed at the March 16-17 Regional Board meeting and is a matter of public record. I voted in favor of the settlement presented by staff. It is the largest fine on record, it gives direction to manage the problem at Hilmar and the study that is commissioned will give us information to solve problems down the road.

10] What enforcement options do I believe provides the most effective for long term violations of permit requirements?

We need clear permits, adequate oversight and definitive control.

I have no problem passing fines and issuing cleanup and abatement or cease and desist orders for gross violators. My voting record is already clear on that even though I have only been on the board a short time.

11] I cannot speak to the issue of the past fifteen years. That does seem like a long time.

I would hope we can come up with a system that solves problems in a more timely manner. We need clear permits, adequate oversight and definitive control.

I am concerned about the precedent that was set in this month's agreement. I think, to be fair and reasonable, we must lay out clear and achievable standards and then follow up.

I would hope that a lot of people have learned a lot of lessons from the Hilmar experience. I know our Regional Board and staff are already processing the lessons learned.

Agricultural Waivers

12-I recused myself from the vote in November since there was a question regarding potential conflict of interest as a farmer in the region.

Water Quality Monitoring

13- status of water monitoring activities.

As you can imagine there is a fairly step learning curve in this position. I do not have a full grasp of monitoring activities in the region. I do understand that there is a combination of private, local, state, federal and academic monitoring sites and there is an effort to develop a unified database of the information from these sites. That is a good thing. The more information we have the better policy we can develop and enforcement we can carry out.

Should monitoring have a higher priority? For us to develop sound policy and fair adjudication we need to have an objective measure of water quality throughout the region.

Cleanup of Polluted Waters

14- TMDL schedule- from staff files

FY 2000

Grasslands Selenium-Promised April, 2000-Submitted June, 2000
Salt Slough Selenium-Promised April, 2000-Submitted June, 2000

FY 2001

San Joaquin River Selenium-June, 2001

FY 2002

Sacramento River Copper, Zinc, Cadmium-Projected June, 2001-Adopted April, 2002
Clear Lake Mercury- December, 2002

FY2003

Sacramento and Feather River Diazinon-Projected June, 2003-Adopted October, 2003
Sacramento Urban Creeks-Projected December, 2003-Adopted June, 2004

FY2004

San Joaquin River Salinity and Boron-Projected June, 2003-Adopted September, 2004
San Joaquin River Dissolved Oxygen-Projected January, 2005-Adopted January, 2005

FY 2005

Cache Creek Mercury-Projected January, 2005-Adopted October, 2005
Delta and other water bodies for organ chlorine pesticides-Projected June, 2006
San Joaquin River Diazinon and Chlorpyifos- Projected June, 2003- Adopted October, 2005

Clear Lake Nutrients- Projected June, 2006-on schedule

FY 2006

American River Mercury-Projected January, 2007
Delta Mercury- Projected January 2005-delayed
San Joaquin River upstream from Stanislaus Salinity and Boron- Projected June, 2006-Expected December, 2006
Delta Diazinon and Chlorpyrifos-Projected 2004 Scheduled September, 2006

FY 2007 and forward

South Delta Channels Dissolved Oxygen
Sacramento and San Joaquin Basin Pesticides
Stockton Area Sloughs and Rivers

As you can easily see much has been done before my appointment. There have been delays to projections. This is understandable since we are breaking new ground in environmental management. Time has also been taken to involve all stakeholders. From what I see everyone is taking this responsibility seriously and want to improve performance in meeting goals. This is something that does require board oversite and is on my radar screen.

15-There are local, state and federal agencies involved in the TMDL issue. I will work to see our efforts enhance each other's efforts. We need to improve communication and sharing of information. As with monitoring I would like to see a common data base through which we can share information.

CALIFORNIA LEGISLATURE

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APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

February 28, 2006

Katharine J. Hart
3251 Cardiff Lane
Granite Bay, CA 95746

Dear Ms. Hart:

As you know, your appointment to the Central Valley Regional Water Quality Control Board is subject to confirmation by the Senate. We have prepared the following questions to which we would appreciate your written responses. Please have this information in our office by March 21, 2006.

Statement of Goals

1. *What do you hope to accomplish during your tenure as a member of the Central Valley Regional Water Quality Control Board? What goals do you have for the board and how will you accomplish them?*

State and Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, yet these are considered part-time positions.

2. *Are state board and regional board staff available to assist you in better understanding some of the complex issues before you?*

3. *Do you have any suggestions on how staff might better assist you?*

4. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*

The Porter-Cologne Water Quality Control Act generally establishes the relationship between the state and regional boards. Regional boards usually set water quality goals in their basin plans, develop total maximum daily loads (numerical limits on the amount of pollution a water body can absorb), enforce permit and discharge requirements and state and federal water quality laws. However, regional board budgets are not reviewed individually by the Governor or the Legislature, and most regional board staffing decisions are made at the regional level, not at the state level.

The state and regional board structure has been criticized by both industry and environmental groups for being cumbersome and lacking accountability, efficiency, and transparency. Both sides note that major policy issues often are decided in the appeals process before the state board instead of through a consistent statewide policy established by the state board and implemented by the regional boards.

5. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how? Are there specific areas of operation such as budget allocations that you think would benefit from increased transparency?*

6. *Do you believe your regional board is adequately funded to enforce the state and federal laws you are charged with enforcing? Are you aware of existing legal requirements faced by your board that are not presently funded or proposed for funding?*

Water Quality Permitting

The federal and state clean water acts require permits to discharge pollutants from stormwater. In the past these permits have imposed best management practices on dischargers under the assumption that the use of those practices will result in water quality improvements. However, there is increasing evidence that best management practices do not always adequately protect water quality. Water quality experts have suggested that regulations governing permits be revised to require enforceable numeric limits, as is required of other sources of pollution. Supporters of numeric limits argue that they would make water quality permits more easily enforceable and transparent, and would be more efficient because permit holders could choose how to comply.

7. *What is your view about the efficacy of relying on a voluntary system of "best management practices" to protect the state's waters against polluted stormwater?*

8. *Would the use of numeric limits in stormwater permits be an improvement over permits that rely on "best management practices?"*

Enforcement of Water Quality Laws

In April of last year the office of the secretary of Cal-EPA reported to the Legislature on environmental enforcement and suggested that the state and regional water boards are among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never seek criminal penalties for serious violations, and generally do not aggressively pursue violators.

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Water quality monitoring can provide the basic data necessary to determine the health of state waters and to establish priorities needed to improve water quality. Yet this activity seems to be chronically underfunded at the state and regional water board level.

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15. *What steps would you take to implement identified pollution loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814

Thank you for your time and cooperation.

Sincerely,

DON PERATA

DP:KW:dc

Katherine J. Hart
701 University Avenue, Suite 200
Sacramento, California 95825

March 21, 2006

VIA FACSIMILE (916) 445-0596

Nettie Sabelhaus
Rules Committee Appointments Director
State Capitol, Room 420
Sacramento, California 95814-4900

Re: Responses to Questions dated February 28, 2006

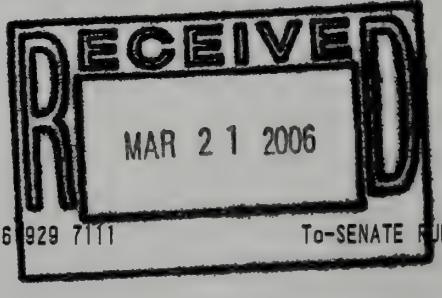
Dear Ms. Sabelhaus:

This letter is intended to respond to Senator Don Perata's correspondence to me dated February 28, 2006 I have prepared the following responses to the Senator's questions. The numbered responses correspond to his numbered questions.

1. *Accomplishments and Goals During Tenure*

During my tenure as a member of the Central Valley Regional Water Quality Control Board ("CV Board"), I have one overall goal - to assist in the improvement of water quality in California while maintaining all the beneficial uses of our waters with a sense of fairness and reasonableness. In conjunction with this overall goal, I have two main priorities. First, I hope to be able to work with my fellow Board members and staff (both Region 5 and State staff) to amend the various applicable Basin Plans, especially those over 10 years old so that we, as a Board, can issue reasonable permits to all dischargers that will both protect the environment while allowing industry, development, agriculture, publicly owned treatment plants, and the like to be able to operate in California. I hope to emphasize and find solutions to allowing various beneficial uses to coexist in California so that we can maintain and improve our abundant and diverse wildlife and habitats, house our residents, keep jobs in California, provide people all over the world with the best produce and food products, and provide clean recreation area to all people who wish to use them. Secondly, I want to help identify, assist with and approve necessary creek restoration projects in the Region 5 area.

These two main goals will, like many other projects, take time, dedication, multi-party and agency cooperation and funding. I realize they are vast and perhaps to some, overly ambitious. However, I am willing to participate in and support various efforts to help secure the necessary funding to accomplish these tasks, which I see as fundamental



to restoring, maintaining, and improving water quality in California, and most especially in Region 5.

2. *State and Regional Board Staff Availability*

Many of the issues addressed by the CV Board are scientifically complex to me because I do not have a scientific background. We have been advised that in some circumstances, we are not permitted to speak with staff regarding certain prosecutorial issues. In this instance, I either wait for the Board hearings to hear the staff's presentation and ask questions publicly or I consult the new Executive Officer, Pamela Creedon, who is extremely helpful in explaining many issues, including scientific ones. I believe, however, that prohibiting Regional Board members from speaking with Staff to get information and background on pending matters is inefficient and counterproductive.

3. *Suggestions on Staff Assistance*

Recently, when we have informational items regarding TMDLs and the like, I have started requesting workshops, which may assist new CV Board members in understanding complicated issues.

4. *Training on Conflict of Interest/Withdrawals Regarding Conflicts*

Prior to my first Board meeting, I met with a member of the Office of Chief Counsel to the State Water Board who briefed me on the various conflict of interest issues. I also reviewed the Political Reform Act (the "PRA") and the Conflict of Interest Code for the State Water Resources Control Board. Finally, I completed the on-line ethics training course on the Attorney General's web site. I submitted a self-certification form to your Committee last year.

Since being appointed I have recused myself twice due to economic interests as defined by the PRA.

5. *View on Relationship between State and Regional Boards Regarding Coordination and Accountability*

I have only been on the CV Board for approximately five months. I have participated in six meetings, one of which was a joint meeting held by the CV Board and State Board on salinity issues. Further, I have never worked either at any Regional Boards or the State Board. So, I am unfamiliar to date with how the system truly works. Nevertheless, from my limited experience, it would appear that better coordination could help resolve many discrepancies between enactment, enforcement, and funding of various issues.

For instance, salinity has been and continues to evolve into an increasingly difficult challenge to water quality in the Central Valley. While I have little background on this issue, the joint meeting held by the State and CV Board, shed light on the extent of the issue and the various interests affected by the issue. It appears to me that on all major issues that affect various regions – including for instance salinity – the State Board should lead the way on the policy determinations, which would provide general guidance to the Regional Boards on how to carry out that policy. Further, I think that joint meetings and/or biennial meetings between all the regional boards and the State Board would be helpful in flushing out issues that affect the various regions and give board members an opportunity to brainstorm solutions to such looming issues.

To date, I have no specific knowledge of how the State budgetary process works. Generally speaking, however, I believe that transparency would likely be beneficial because boards can learn from other agencies' and parties' comments on the budgetary process.

6. *Regional Board Funding*

From my limited experience it does not appear that the CV Board is adequately funded to effectively enforce and carry out its mission under state and federal water laws. This is especially true with respect to basin planning.

All permits are issued based on the beneficial uses and standards contained in the basin plans. At the last CV Board meeting on March 17th, we had the Triennial Review of the Sacramento and San Joaquin Basin Plan, wherein the CV Board was required to list our priorities for the coming years. It became painfully obvious from Board discussion that over the past years the Board has listed "beneficial uses" as top priorities, yet little, if anything, has been done to truly work on the critical issues surrounding those topics. More specifically, I learned that updating beneficial uses requires amending basin plans. However, updating beneficial uses takes extensive research, staff time, and thus, funding. Currently, the CV Board is allocated .6 persons (not even one whole person) to attend to the beneficial uses issue. Interested parties at the March hearing emphasized that they no longer take commenting on the Triennial Review seriously because "nothing ever happens with respect to the Board's priorities." Needless to say, our Board embarked on a conversation as to how to obtain funding for basin planning generally, as well as how to obtain funding for other critical issues such as enforcement and NPDES permitting.

Ultimately, with basin plans that are in excess of 30 years out of date, there is little of hope of attempting to properly and successfully enforce state and federal water laws.

7. *View on Best Management Practices ("BMPs")*

Unfortunately, given my little time on the Board, I have limited background in this area. However, it appears that a few bad actors create big problems for those who do comply with their BMPs. In this regard, I think Board staff should focus more on enforcing applicable BMPs and the Board should strictly enforce penalties against bad actors. I think it would also be helpful for there to be mandatory training programs for folks ordered to comply with BMPs so that they are fully advised of all BMP requirements.

8. *Use of Numeric Limits in Stormwater Permits versus Use of BMPs*

It does appear that having numeric limits in stormwater permits could be an improvement over permits that rely on BMPs insofar as permit holders would be clearer on what the limits of their discharges are and in terms of enforcement for Board staff. Notwithstanding this fact, the Board needs to be extremely careful in imposing numeric limits to ensure such limits are reasonable and within the realm of sound science - where there is substantive scientific evidence as to what the limits should be.

9. *Hilmar Cheese Company Enforcement Action*

On March 16th, the Board voted 8 to 1 to adopt the proposed Settlement Agreement as recommended by Board staff.

10. *Enforcement Options*

The Hilmar enforcement action was extremely challenging to deal with on a personal basis for me because I came into the matter after staff and management had been dealing with the issue for a number of years. I decided that trusting our staff and management was in the best interests of all parties involved. The Settlement Agreement proposed on the 16th was much improved in terms of the Supplemental Environmental Program (SEP) to be pursued. As revised, the SEP will address the improvement of water quality as opposed to a justification of why Hilmar violated its permit. The SEP will further assist in identifying causes and resolutions to the salinity issues facing many in the food processing industry.

I strongly believe enforcement is extremely important. And, the way enforcement is carried out is extremely important. Staff and the Board should be consistent in what they tell each violator and need to follow through with enforcement on the agreements made by each party. If the Board and its staff are up front about potential liabilities of violations, we can more easily enforce those violations. Further, permits and process should be as clear as possible. Finally, follow through is crucial. We must be able to

identify necessary enforcement actions, prioritize them, and then proceed with enforcement as quickly as possible while ensuring due process is satisfied.

11. *Prevention of Situation from Occurring in the Future*

The Board has already given direction to its new Executive Officer to propose how we might more effectively enforce permit violations. Often we are faced with staff and funding limitations. To address these shortcomings, it is my hope that in the future, this Board will issue permits with which dischargers can comply while maintaining and/or improving water quality. It will be my mission to strongly advocate for enforcement against those dischargers who are recalcitrant and/or fail to comply with permits that were reasonably negotiated and imposed. In my tenure to date, we have imposed a number of fines against dischargers for failing to comply with their permits. I will continue to support staff in its enforcement actions and encourage them to prioritize such actions in the order of the most egregious and continuous offenders.

12. *Explanation of Refusal to Support Staff Recommendation Regarding Agricultural Waiver*

I have been advised by State Board Counsel that this matter is pending and further discussion is not appropriate at this time. I will be pleased to explain my vote and actions at a later date when appropriate.

13. *Water Monitoring Activities*

Region 5 covers 40% of the State and stretches from the Oregon border to the northern tip of Los Angeles County (60,000 square miles). This area, which includes all or part of 38 of the State's 53 counties, also contains approximately 75% of the State's irrigated land. Three major basins have been delineated within this region, namely the Sacramento River, San Joaquin River, and Tulare Lake Basins. Based on the Board's website, SWAMP efforts within each of the Basins have been developed to maximize monitoring frameworks already in place and leverage available resources.

In general, the Upper Sacramento River Basin augmented monitoring efforts by local watershed groups such as the Feather River Coordinated Resource Management Program (CRMP) and the Pit River Alliance, the Lower Sacramento River Basin focused initial efforts on special studies evaluating effluent dominated water bodies with broader monitoring to follow, the San Joaquin River Basin built its monitoring effort off of the existing framework utilized in the Grassland Bypass Project (an agricultural subsurface drainage management program), and the Tulare Lake Basin focused on watersheds with known water quality impairments (e.g., the County of Madera is currently using grant funding to study nutrients in the Fresno River and Hensley Lake).

There clearly is not enough funding to conduct the extensive research necessary to monitor the physical, chemical and biological characteristics of the waters in our region. To maximize resources, all monitoring efforts are coordinated with existing monitoring programs-both internal programs (TMDL, subsurface ag drainage, WDR, and Ag Waiver) and external programs (other agencies such as USGS and University of California and grant funded projects). For instance, due to contracting and/or staffing issues, a goal of quarterly sampling over the last three fiscal years has not always been met for the Tulare Lake Basin. Other Basins suffer the same fiscal issues. More specifically, private funding opportunities are limited. Companies such as Home Depot, Best Buy, and Teichert provide grants to local 501(c)(3)s to do general environmental work. There are a number of federal grant programs, but few are limited to improving water quality and competition for such grants is fierce. Finally, Regional Boards seem to be fairly limited in funding it receives from the SWRQB through 319(h) of the Clean Water Act and SWAMP. To my knowledge, the only other potential sources of funds for such monitoring come from SEPs or ACLs adopted by the Board.

14. *TMDL Schedule*

A copy of the Board's TMDL schedule is attached for your reference. As you might suspect, the blockade to a successful and up-to-date program is the lack of funding provided by the Legislature. In order to create TMDLs, staff needs monitoring information and good sound science. Without such information, any TMDL policies are subject to legal challenge, which is costly, inefficient, and essentially pointless. New water laws continue to get adopted by the Legislature without the necessary staffing and funding resources. The failure to provide the necessary staffing and funding for the work takes staff away from permitting and enforcement issues, and leads to ineffectiveness at the regional level.

First and foremost, if the Legislature, agrees that it is a priority to complete and implement more TMDLs on an expedited basis, then the Legislature must be willing to provide more money to the State and Regional Boards. I strongly support approaching the Legislature with a budget for each TMDL we are directed to create to evidence the financial constraints with which the Board and its Staff are presented. Secondly, I support the gathering of information and evidence by local groups and interested parties with whatever resources they might have.

15. *Steps to Implement TMDLs*

If this question is intended to ask what steps I would take to implement waste load reductions, I would support the following: issue permits that require waste load reductions, approve offset programs, enforce general permit requirements, and approve Supplemental Environmental Projects that study how waste loads can be reduced.

If the second question is whether I believe other agencies have a role in implementing waste load reductions, the answer is yes. Such reductions can be accomplished with better coordination among agencies that share jurisdiction with the CV Board.

Very truly yours,

Katherine J. Hart

**REPLY TO LETTER, DATED FEBRUARY 28, 2006
FROM PERATA, CHAIRMAN,
SENATE RULES COMMITTEE**

**PREPARED BY KARL E. LONGLEY,
MEMBER, CENTRAL VALLEY
REGIONAL WATER QUALITY CONTROL BOARD,
MARCH 15, 2006**

The questions and statements provided by the Senate Rules Committee in their document of February 28, 2006 are italicized below with the answers in normal type.

Statement of Goals

1. *What do you hope to accomplish during your tenure as a member of the Central Valley Regional Water Quality control Board? What goals do you have for the Board and how will you accomplish them?*

My goals are encompassed in what I believe to be important functions of the regional water quality boards. Therefore, as I previously have stated, the short reply regarding my goals for the Board can be stated in three words, *PROTECT WATER QUALITY*. More specifically, the boards have a prime responsibility for insuring that state and federal water pollution control laws are enforced. This is accomplished by:

- Using waste discharge permits that are targeted at preventing water pollution; maintaining California's waters in a state that allows them to be fishable and swimmable; and, insuring that federal mandates are carried out for the purpose of protecting water quality and protecting California businesses and government from federal penalties.
- Insuring that pollution and contamination cleanup procedures are carried out, particularly where the public's health, safety, and/or welfare are threatened.
- Insure that the monitoring (data gathering) efforts are in place to provide the data necessary to proved an accurate assessment of the environmental parameters, quality, and beneficial uses related to California's surface waters and groundwater.
- Carry out an inspection program of waste discharges as a necessary component of the enforcement of both state and federal law.

A particular issue on which I am diligently working is salinity in the Central Valley. The increasing salinity in Central Valley waters and soils has increasingly important aquatic ecosystem, water quality, and socio-economic impacts in both the Central Valley and elsewhere in California that should be mitigated. A compelling need exists for responsible individuals to work diligently together for the purpose of developing solutions that will mitigate the salinity impacts to California waters. As an example, the "In Valley" solution proposed by some for the Central Valley's salinity problem would eventually lead to significant soil, ground water, and surface water degradation resulting in the Central Valley suffering the fate of other areas in the world where high concentrations of salinity accumulated in the soil and water has led to the destruction of their economies and social structures. An "Out of the Valley" solution that provides discharge to the ocean must be developed and implemented for the

Central Valley as well as for other areas in California suffering similar salinity induced impacts. This is an issue that should concern all Californians.

State and Regional Board Roles

The issues addressed by regional boards are often scientifically complex. Preparation for hearings can be time consuming for board members, yet these are considered part-time positions.

2. *Are state board and regional board staff available to assist you in better understanding some of the complex issues before you?*

I have always found state and regional board staff very helpful in providing information that I require addressing the many water quality issues that are the responsibility of the Central Valley Regional Water Quality Control Board (CVRWQCB). This help is provided notwithstanding staff's very heavy workload and demanding time schedules.

3. *Do you have any suggestions on how staff might better assist you?*

During the past few years, the content on the executive officer's report has continued to improve. Today, this report provides an excellent chronicle of staff activities and progress being made on water quality issues being addressed by CVRWQCB. E-mail to board members summarizing very important actions being taken by CVRWQCB staff provides timely updates.

4. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*

State Water Resources Control Board (SWRCB) legal counsel provides one-on-one instruction to new board members. Conflict of interest is among the many topics addressed during these briefings. Information and training is provided at every Water Quality Coordinating Conference (WQCC) by State Water Resources Control Board (SWRCB) legal staff to attending regional board members. In addition to a prepared presentation, the SWRCB legal staff conducting the session also provides considerable time for answering questions asked by regional board members. Conflict of interest is an issue that is generally addressed. There often is interaction between members of different regional boards thus further promoting the continual quest to achieve consistency in actions taken by the nine regional boards.

Another important source of training is found at the Attorney General's website, http://www.ag.ca.gov/ethics/index.htm, where on-line ethics training is available. I have availed myself to the on-line ethics training that must be completed at least once every two years. As stated in this training, "(A) public official has a conflict of interest with regard to a particular governmental decision if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the official's economic interests."

I have not withdrawn from voting on a decision because I have not had a conflict of interest. I would recognize such a conflict based upon the training that I have received from the training sources previously described.

The Porter-Cologne Water Quality Control Act generally establishes the relationship between state and regional boards. Regional boards usually set water quality goals in their basin plans, develop total maximum daily loads (numerical limits on the amount of pollution a water body can absorb), enforce permit and discharge requirements and state and federal water quality laws. However, regional board budgets are not reviewed individually by the Governor or the Legislature, and most regional board staffing decisions are made at the regional level, not at the state level.

The state and regional board structure has been criticized by both industry and environmental groups for being cumbersome and lacking accountability, efficiency, and transparency. Both sides note that major policy issues often are decided in the appeals process before the state board instead of through a consistent statewide policy established by the state board and implemented by the regional boards.

5. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how? Are there specific areas of operation such as budget allocations that you think would benefit from increasing transparency?*

I believe that a very good relationship between SWRCB staff and officials has been even more enhanced due to actions of officials now serving on the SWRCB. An example is the two joint workshops that have been held addressing salinity issues, one in July 2005 and the second on January 31, 2006. Subsequent follow up activities have involved a great deal of coordinated, joint efforts between SWRCB and CVRWQCB officials and staff. Undoubtedly, coordination and accountability can be improved. One opportunity is the greater use of electronic transmission using the various advanced video conferencing formats now available. This can effectively mitigate the time and distance factor that sometimes stymies coordination in a geographical area as large as the State of California, or even the Central Valley.

I have not encountered a problem with the transparency of the budget process within the SWRCB or the CVRWQCB. However, I have much uncertainty regarding how the legislature and governor determine budgets.

6. *Do you believe your regional board is adequately funded to enforce the state and federal laws you are charged with enforcing? Are you aware of existing legal requirements faced by your board that are not presently funded or proposed for funding?*

While I am not aware of any issue without any funding, the SWRCB and the Regional Boards lack the funding necessary to enforce and comply expeditiously with all of the various mandates placed upon them including applicable federal and state laws. Many issues such as planning are funded at only a small fraction of their requirements.

Water Quality Permitting

The federal and state clean water acts require permits to discharge pollutants from stormwater. In the past these permits have imposed best management practices on dischargers under the assumption that the use of those practices will result in water quality improvements. However, there is increasing evidence that best management practices do not always adequately protect water quality. Water quality experts have suggested that regulations governing permits be revised to enforceable numeric limits, as is required of other sources of pollution. Supporters of numeric limits argue that they would make water quality permits more easily enforceable and transparent, and would be more efficient because permit holders could choose how to comply.

7. What is your view about the efficacy of relying on a voluntary system of "best management practices" to protect the state's waters against polluted stormwater?

Best management practices (BMPs) are a practice or combination of practices determined to be an effective and practicable means of preventing or reducing the amount of water pollution generated by non-point sources. BMPs may involve practices, technological and structural remedies, or institutional considerations, or a combination of the foregoing.

BMPs are an integral part of any competent non-point source water quality program. Valid BMPs prevent water quality degradation. Examples are the use of erosion control measures by a land developer or as part of a logging operation to prevent the disturbance and movement of top soil off the construction or logging site, respectively. While another integral part of a water quality program is an effective monitoring program, the detection of a violation indicates that an unwanted event has occurred that very likely could have been prevented by an effective BMP.

An important reason why BMPs are necessary in stormwater programs is that the "first flush" of the rainfall season often is the most likely event that will have the highest concentration of pollutants. However, due to the oftentimes short time periods that highly polluted stormwater runoff may occur as a result of a precipitation event, the accurate identification and quantification of the pollutants may not always be possible. Therefore, a stormwater program that relies solely on monitoring and follow up enforcement can be far from being optimally effective. However, if BMPs, which are pollution prevention measures, are incorporated into the stormwater management program, much greater success should be realized in minimizing environmental impact due to pollutants in stormwater runoff.

8. *Would the use numeric limits in stormwater permits be an improvement over permits that rely on "best management practices?"*

Non-point pollution prevention programs can be most effective when they rely on a balanced mix of BMPs and enforceable numeric standards. It should be remembered that the California Water Code prohibits stating how compliance will be achieved. The CVRWQCB does not dictate treatment or BMPs, but does require that dischargers comply with water quality objectives.

Enforcement of Water Quality Laws

In April of last year the secretary of Cal-EPA reported to the Legislature on environmental enforcement and suggested that the state and regional water boards are among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never seek criminal penalties for serious violations, and generally do not aggressively pursue violators.

Hilmar Cheese Company, located in Merced County, is the largest producer of cheese in the world. Over the last fifteen years the company has been exceeding pollution limits set in its waste discharge requirement permits. Instead of enforcing the pollution limits, the board raised the amount of pollution allowed four times between 1990 and 1007. In 2005 the company was fined $4 million. Later the board staff negotiated a proposed $3 million settlement; Hilmar would admit no wrongdoing, and the company would be allowed to continue to pollute until sometime in the future when both sides could agree to new pollution restrictions. This settlement and two other option are still before the board.

9. What is the status of the enforcement action against Hilmar Cheese Company?

Since the Hilmar issue is still pending before the CVRWQCB I must be very careful in answering this question. My below answers will be directed more towards my general philosophy and will not be directed to the Hilmar issue.

10. What enforcement options do you believe provides the most effective tools for long-term violations of permit requirements?

First, long-term violations unanswered by some action, such as a cease and desist order (CDO) or a cleanup and abatement order (CAO), indicate a lack of oversight by a regional board. This lack of oversight may be due to a regional board whose capability is overtaxed due to budget shortfalls, inadequate monitoring and reporting, lack of proper direction given to staff, or a combination of these factors.

Long-term polluters should be brought under regulatory scrutiny using one of these tools (CDO or CAO), and other regulatory tools should then be considered for use as appropriate. Particularly severe measures should be applied to those polluters who are not demonstrating that they are working vigorously to mitigate the causes and impacts of the pollution resulting from their activity.

11. It took 15 years for the enforcement of the company's pollution limits to rise to the level of a fine. How will you prevent that situation from occurring in the future? Is change needed?

As stated above in question #9, since the Hilmar issue is still pending before the CVRWQCB I must be very careful in answering this question. However, in addition to the factors discussed above, an important aspect of improving the regional board's effectiveness in the future is to insure that they have the resources required to do the job.

Agricultural Waivers

Current law requires regional water quality boards to issue requirements on discharges of both point and nonpoint source pollution in order to protect the waters of the state, unless those requirements are waived pursuant to Section 13269 of the Water Code. That code section states that waivers from discharge requirements can be made if it is "in the public interest," a criterion that has been used in a number of different ways over the years. The agricultural waiver in the Central Valley has been among the state's most contentious.

The Central Coast and Los Angeles regional boards have adopted agricultural waivers that appear to be more transparent and that generate more publicly accessible information. The Central Valley board rejected a staff recommendation that would have made the agricultural waiver more closely resemble waivers of these other two boards. We would appreciate an update of your board's agricultural waiver.

12. Would you explain the refusal of the Central Valley regional board to support the staff recommendation and would you explain how you voted on this question and why?

I am unable to find in the record the action referred to above, the action being that "(T)he Central Valley regional board rejected a staff recommendation that would have made the agricultural waiver more closely resemble waivers of these other two boards." Possibly the action referred to is the October 2005 workshop during which several alternatives were discussed. The alternatives that looked most like the Region 3 approach were not looked at favorably by the Board although no votes were taken. The staff report given at this workshop is included without its attachments in this document as Attachment 1.

Water Quality Control Board, Region 3 only recently has developed an agricultural waiver program. Water Quality Control Board, Region 4 has adopted an agricultural waiver program about the time CVRWQCB (Water Quality Control Board, Region 5) adopted its program. The CVRWQCB agricultural waiver program is several times larger than the two other agricultural waiver programs in terms both of the geographical area covered and the number of participants. Further, the Central Valley region is more diverse in terms of geography, soils, crops, and rainfall. Water Quality Control Board, Region 3 has had an existing active agricultural stakeholder process for years due to the Monterey Bay Marine Sanctuary and the inflow of federal funds to protect the Sanctuary.

While some may advocate the issuance of waste discharge requirements (WDRs) to each agricultural unit, the estimated additional personnel resources for this action have been estimated in the past to be about 500 additional staff members. This is clearly impractical and cost prohibitive. The primary goal, protect water quality, has been also stated as "... consistent implementation of management practices that result in compliance with water quality objectives." A comprehensive and effective water monitoring program must be fully implemented and continued throughout the Central Valley to provide the data necessary to identify and quantify specific pollution sources. This activity can best accomplished by local public entities such as water districts or watershed coalition groups under requirements developed and adopted by the CVRWQCB.

A watershed management approach provides the best opportunity for a holistic approach focused upon both point sources and non-point sources and their impact upon the beneficial uses of the water bodies

within the watershed including groundwater. A disadvantage of the watershed management approach is that the required stakeholder process is time consuming and expensive. Despite this disadvantage, the stakeholder is an important and critical element of the watershed management approach. Most regional board funding cannot be used to support stakeholders and stakeholders from environmental and some other organizations have reported that their limited funds do not provide the type of sustained and vigorous participation required for them to participate fully in the stakeholder process.

Water Quality Monitoring

Water quality monitoring can provide the basic data necessary to determine the health of state waters and to establish priorities needed to improve water quality. Yet this activity seems to be chronically underfunded at the state and regional board level.

Several years ago a legislatively mandated working group wrote to the state water board advocating adequate funds for the state's Surface Water Ambient Monitoring Program. The letter stated that such funds are "critical to implementing the state's other water quality programs effectively, and that they will more than pay off this investment in terms of future dollars spent more effectively on restoration and pollution prevention."

13. What monitoring activities occur within your board's jurisdiction that are conducted by private dischargers, state agencies and others? How are these activities funded and at what levels? Should water quality monitoring be a higher priority for the state and regional boards? What specific steps could your board take to make monitoring more effective?

Monitoring within the CVRWQCB's area of responsibility is carried out by dischargers and a number of State and federal agencies. I do not have data available to address the level and adequacy of funding for monitoring for dischargers or other agencies. However, the SWRCB and CVRWQCB surface water monitoring programs are greatly underfunded.

Important aspects of the surface water monitoring program have been under the purview of Surface Water Ambient Monitoring Program (SWAMP). The SWRCB receives from 5% to 10% of the funding that was requested for full implementation of the SWAMP program. The amounts vary with budget year, but the amount is still quite small compared to the need.

In October 2005, the SWRCB released a report that provided an evaluation of SWAMP. I believe that the implementation priorities found in this report are important and the success of SWAMP depends upon the success of realizing the successful implementation of these priorities. These implementation priorities include, in part, "...continued monitoring, refining the Strategy, conducting and responding to an external peer review, and assessing the data collected during the first five years of the program. SWAMP views the monitoring strategy as a living document that we will update and modify on an annual basis. The Strategy will serve as the framework for monitoring priorities at both the State and Regional Water Boards."

Cleanup of Polluted Waters

Governor Schwarzenegger has stated in his Environmental Action Plan that he will fully implement existing water quality programs, such as municipal stormwater permit programs and total maximum daily load programs.

Currently, regional water boards lag far behind their adopted schedules for cleaning polluted or impaired waters, and existing monitoring programs make it difficult to identify other waters that may be polluted.

14. What schedule currently exists at the regional board for TMDL development? Is the schedule being met and if not, please specify what aspects of the schedule are unmet? What specific steps do you support to get your regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?

In general, delays can be attributed to the fact that the TMDLs that we are working on are complex and involve large watershed with many dischargers and discharger types. It was difficult to predict how much time and effort it would take to do the science right and meaningfully involve stakeholders in the process. Quick and dirty TMDLs undoubtedly lack the necessary stakeholder involvement. The CVRWQCB is becoming better at prediction and CVRWQCB staff is working through the TMDL roundtable to implement a comprehensive improvement strategy.

A summary of TMDLs being prepared by the CVRWQCB is presented below. While the progress for some TMDLs falls behind schedule, TMDLs are typically completed on time or only slightly behind schedule.

TMDL Progress Summary

FY 2000 - Grasslands Selenium – Promised April 2000 – Submitted June 2000
- Salt Slough Selenium – Promised April 2000 – Submitted June 2000

FY 2001 - San Joaquin River Selenium – June 2001

FY 2002 - Sacramento River Copper, Zinc, Cadmium – Projected date June 2001 – Adopted April 2002
- Clear Lake Mercury – December 2002

FY 2003 - Sacramento and Feather River Diazinon - Projected date June 2003 – Adopted October 2003
- Sacramento Urban Creeks (several TMDLs) – Projected date December 2003 – Approved June 2004

FY 2004 - San Joaquin River Salinity and Boron – Projected date June 2003 – Adopted September 2004 – delays due to need for extended public outreach
- San Joaquin River Dissolved Oxygen – Projected date January 2005 – Adopted January 2005

TMDL Progress Summary (Continued)

FY 2005 - Cache Creek Mercury (Harley Gulch, Bear Creek) – Projected date January 2005 – Adopted October 2005 – required additional stakeholder involvement
- Delta and other water bodies organochlorine pesticides – Projected date June 2006
- San Joaquin River Diazinon and Chlorpyrifos – Projected date June 2003 – Adopted October 2005 – delays due to staff changes and Sacramento/Feather River lawsuit on diazinon objectives
- Clear Lake Nutrients – Projected date June 2006 – Scheduled for June 2006

FY 2006 - American River Mercury – Projected date January 2007
- Delta Mercury – Projected date January 2005 – Scheduled for June 2006 but will be delayed – delays due to need for extended discussions on how to address concerns with wetland discharges and coordination with Region 2 mercury TMDL

FY 2006 (Continued) - San Joaquin River upstream from Stanislaus Salinity and Boron – Projected date June 2006 – delayed to December 2006 because of delays in approval by State Board of downstream salinity TMDL
- Delta Diazinon and Chlorpyrifos – Projected date June 2004 – Scheduled for September 2006 – dependent on completing San Joaquin River diazinon and chlorpyrifos TMDL

FY 2007 and beyond
- South Delta Channels Dissolved Oxygen –
- Sacramento and San Joaquin Basin Pesticides –
- Stockton Area Sloughs and Rivers –

Any single watershed is a very complex and integrated physical, biological and chemical system with multiple inputs from both anthropogenic and non-anthropogenic sources. To develop even a partial understanding of a single watershed in terms scientifically defensible is a monumental task. Expanding this undertaking to the thousands of watersheds in California gives some understanding of the enormity of this task. It is a task that requires a great deal of time to develop to develop TMDLs for a single watershed that is based on good science. Even when a water body impairment is clearly evident to all, the sources of the contaminant(s) contributing to the impairment may not be well known, and the best management practices to mitigate the contaminants and their sources must be developed. The penalty for hastily developing TMDLs without good science is to develop TMDLs that are not effective.

The answer that I provided to the Senate Rules Committee in my letters of June 12, 2000 and May 2002 is still generally applicable. That answer is quoted, in part, below.

"As a board member I will work towards insuring:
(a) that TMDLs be developed as expeditiously as possible,
(b) that available resources are being put to good use to complete the about 150 TMDLs requiring completion,
(c) that the board executive officer work with the board members in seeking the additional resources to complete the 150 TMDLs, and
(d) that the technical means and resources be sought to shorten the estimated time of 11 years for the completion of this task."

As a board member I have and will continue to work for the above four points (a-d) that I believe are important and that are now in place for the Central Valley Regional Water Quality Control Board.

I believe that over the long-term the funding for the development of TMDLs should continue to be a mix of state and federal funds. Non-point sources of contaminants include urban, agriculture, and public lands. Fees for any contaminant having non-point origins would be difficult to apply without first doing the scientific studies necessary to partition the contaminant contribution among its many possible sources. However, fee based funding can be problematic. For example, most sources of mercury were developed long ago and now lack the economic viability needed to pay fees.

15. What steps would you take to implement identified pollution loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?

The first of a two-step process is for the CVRWQCB to identify impaired surface waters. This is a process requiring the collection and evaluation of considerable environmental data. Quoting from an USEPA document, "... (A)ny water body that does not meet or is not expected to meet the state's water quality standards after full implementation of existing permits should be considered impaired and placed on the 303(d) list. This includes waters that fail to meet any of their applicable criteria -- whether narrative or numeric, or chemical, physical, or biological. For example, water that appears to meet all its numeric chemical criteria (such as the criteria for dissolved oxygen, pH, and various common pollutants) but doesn't meet its narrative biological criteria should be listed as impaired."

The second of the two steps is to implement the TMDL process. Each TMDL project includes an important stakeholder that can necessarily be lengthy. It also involves considerable additional data collection and evaluation, and the determination of the necessary measures that must be implemented to restore the health of the water body. CVRWQCB staff is proceeding with this complicated but necessary process but are somewhat hampered in their efforts since staffing requirements for complicated projects are not fully available under current funding levels.

Other agencies are involved and have an appropriate role in the TMDL effort including the Department of Fish and Game and the Department of Water Resources. It is my understanding that California agencies are generally meeting their responsibilities in regards to the TMDL process within the bounds of their staffing limitations.

CALIFORNIA LEGISLATURE

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APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

February 28, 2006

Dan B. Odenweller
2643 Tamarisk Avenue
Stockton, CA 95207-1344

Dear Mr. Odenweller:

As you know, your appointment to the Central Valley Regional Water Quality Control Board is subject to confirmation by the Senate. We have prepared the following questions to which we would appreciate your written responses. Please have this information in our office by March 21, 2006.

Statement of Goals

1. *What do you hope to accomplish during your tenure as a member of the Central Valley Regional Water Quality Control Board? What goals do you have for the board and how will you accomplish them?*

State and Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, yet these are considered part-time positions.

2. *Are state board and regional board staff available to assist you in better understanding some of the complex issues before you?*

3. *Do you have any suggestions on how staff might better assist you?*

4. *What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to withdraw yourself from voting on an issue? Have you ever done so since being appointed to this board?*

The Porter-Cologne Water Quality Control Act generally establishes the relationship between the state and regional boards. Regional boards usually set water quality goals in their basin plans, develop total maximum daily loads (numerical limits on the amount of pollution a water body can absorb), enforce permit and discharge requirements and state and federal water quality laws. However, regional board budgets are not reviewed individually by the Governor or the Legislature, and most regional board staffing decisions are made at the regional level, not at the state level.

The state and regional board structure has been criticized by both industry and environmental groups for being cumbersome and lacking accountability, efficiency, and transparency. Both sides note that major policy issues often are decided in the appeals process before the state board instead of through a consistent statewide policy established by the state board and implemented by the regional boards.

5. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how? Are there specific areas of operation such as budget allocations that you think would benefit from increased transparency?*

6. *Do you believe your regional board is adequately funded to enforce the state and federal laws you are charged with enforcing? Are you aware of existing legal requirements faced by your board that are not presently funded or proposed for funding?*

Water Quality Permitting

The federal and state clean water acts require permits to discharge pollutants from stormwater. In the past these permits have imposed best management practices on dischargers under the assumption that the use of those practices will result in water quality improvements. However, there is increasing evidence that best management practices do not always adequately protect water quality. Water quality experts have suggested that regulations governing permits be revised to require enforceable numeric limits, as is required of other sources of pollution. Supporters of numeric limits argue that they would make water quality permits more easily enforceable and transparent, and would be more efficient because permit holders could choose how to comply.

7. *What is your view about the efficacy of relying on a voluntary system of "best management practices" to protect the state's waters against polluted stormwater?*

8. *Would the use of numeric limits in stormwater permits be an improvement over permits that rely on "best management practices?"*

Enforcement of Water Quality Laws

In April of last year the office of the secretary of Cal-EPA reported to the Legislature on environmental enforcement and suggested that the state and regional water boards are among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never seek criminal penalties for serious violations, and generally do not aggressively pursue violators.

Hilmar Cheese Company, located in Merced County, is the largest producer of cheese in the world. Over the last fifteen years the company has been exceeding pollution limits set in its waste discharge requirement permits. Instead of enforcing the pollution limits, the board raised the amount of pollution allowed four times between 1990 and 1997. In 2005 the company was fined $4 million. Later the board staff negotiated a proposed $3 million settlement; Hilmar would admit no wrongdoing, and the company would be allowed to continue to pollute until sometime in the future when both sides could agree to new pollution restrictions. This settlement and two other option are still before the board.

9. *What is the status of the enforcement action against Hilmar Cheese Company?*

10. *What enforcement options do you believe provides the most effective tools for long-term violations of permit requirements?*

11. *It took 15 years for the enforcement of the company's pollution limits to rise to the level of a fine. How will you prevent that situation from occurring in the future? Is change needed?*

Agricultural Waivers

Current law requires regional water quality control boards to issue requirements on discharges of both point and nonpoint source pollution in order to protect the waters of the state, unless those requirements are waived pursuant to Section 13269 of the Water Code. That code section states that waivers from discharge requirements can be made if it is "in the public interest," a criterion that has been used in a number of different ways over the years. The agricultural waiver in the Central Valley has been among the state's most contentious.

The Central Coast and Los Angeles regional boards have adopted agricultural waivers that appear to be more transparent and that generate more publicly accessible information. The Central Valley board rejected a staff recommendation that would have made the agricultural waiver more closely resemble waivers of these other two boards. We would appreciate an update of your board's agricultural waiver.

12. *Would you explain the refusal of the Central Valley regional board to support the staff recommendation and would you explain how you voted on this question and why?*

Water Quality Monitoring

Water quality monitoring can provide the basic data necessary to determine the health of state waters and to establish priorities needed to improve water quality. Yet this activity seems to be chronically underfunded at the state and regional water board level.

Several years ago a legislatively mandated working group wrote to the state water board advocating adequate funds for the state's Surface Water Ambient Monitoring Program. The letter stated that such funds are "critical to implementing the state's other water quality programs effectively, and that they will more than pay off this investment in terms of future dollars spent more effectively on restoration and pollution prevention."

13. *What monitoring activities occur within the board's jurisdiction that are conducted by private dischargers, state agencies, or others? How are these activities funded and at what levels? Should water quality monitoring be a higher priority for the state and regional boards? What specific steps could your board take to make monitoring more effective?*

Cleanup of Polluted Waters

Governor Schwarzenegger has stated in his Environmental Action Plan that he will fully implement existing water quality programs, such as municipal stormwater permit programs and total maximum daily load programs.

Currently, regional water boards lag far behind their adopted schedules for cleaning polluted or impaired waters, and existing monitoring programs make it difficult to identify other waters that may be polluted.

14. *What schedule currently exists at the regional board for TMDL development? Is the schedule being met and if not, please specify what aspects of the schedule are unmet? What specific steps do you support to get your regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?*

15. *What steps would you take to implement identified pollution loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814

Thank you for your time and cooperation.

Sincerely,

DON PERATA

DP:KW:dc

Dan Odenweller
Responses
WQCB, Central Vall

172

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MAR 20 2006

March 18, 2006

RECEIVED
MAR 21 2006

Senator Don Perata
Chairman, Senate Rules Committee
Room 420, State Capitol
Sacramento, CA 95814

Attn: Nettie Sabelhaus
Rules Committee Appointments Director

Dear Ms. Sabelhaus,

Thank you for the opportunity to respond to the questions posed in the February 28, 2006 letter from Senator Perata. I have grouped my responses as they are presented in the letter, for your convenience.

Statement of Goals

1. During my tenure as a member of the Central Valley Water Quality Control Board, I would hope to make progress toward the goals described below, by working with the other Board members to achieve a common understanding and purpose. The goals include:

 a. An increased emphasis and reliance on science based decision making,
 b. protection of the Fish and Wildlife resources of the Delta, and its tributaries,
 c. protection of the public who utilize the waters of the Delta for drinking water and for water contact recreation (and especially Public Safety Search and Rescue team personnel) from waterborne pathogens, by restoring Delta water quality, and
 d. developing improved relationships with our stakeholders, both to ease tensions and to provide for the use of a concensus based approach to improving water quality in the waters of the state for which we are responsible.

State and Regional Board Roles

2. During my limited tenure to date as a Board Member, I have found staff at both the state board and regional board available to assist me in understanding the issues before us. To date I have had no problem with this issue.

3. Perhaps the most significant factor is probably the workload imposed on some of the staff, as a result of resource shortages. Whether these shortages are the result of ineffective use of existing staff resources, or a shortfall in staff resources for the workload assigned, is at this time unclear to me. However, in certain areas there is a shortage of staff resources.

4. I was welcomed to my position as a Board Member with a detailed briefing on my duties and responsibilities, provided prior to my first Board meeting, by Phillip Wyels and Frances McChesney, both SWRCB Staff Counsel. Included in that briefing was guidance on "conflict of interest," "ex-parte communications," and "incompatible activities."

 I then completed the web based training module on these subjects provided by the Office of the Attorney General, and I have subsequently obtained copies of the appropriate materials, including guidance from the SWRCB Office of the Chief Counsel.

 To date, I have not had reason to withdraw (recuse) myself from voting on (or participating in the hearing for) any issue.

5. While I have some early views on the relationship between the state board and the regional board, I am not well enough informed to offer any specific recommendations at this time.

 I view the relationship much as a traditional staff – line organization, with the State board responsible for policy, and the Regional board responsible for implementation, of water quality objectives. There is clearly more to the picture, as the State board deals with water rights, which are not part of the Regional board charge.

 The budget, staffing and organization charts for the Central Valley Regional Water Quality Control Board have been readily available, in fact they have been appended to the Executive Officer's Monthly Report (and are posted on the web site).

 The concern over the budget process for the regional board is a new and interesting issue, given my background with the California Department of Fish and Game. The Department of Fish and Game has both staff and line units (headquarters and six regions), which is not unlike the state and regional board organization. In my experience, both the Governor, and the Legislature, have generally depended on the management and staff of the Agency to conduct the detailed reviews and to make

staffing level recommendations. Unless problems are present, the recommendations are reviewed by the Department of Finance and the Legislative Analysts Office, and lead to final decisions by the Legislature and the Governor.

Major policy issues, in my opinion, appear to be going to the "appeals process" because some of the groups (collectively our stakeholders) have chosen to seek an advantage (or to respond in kind) by doing so. Thus, the role of the Board is now often seen as a forum to provide an opportunity in which the competing groups seek to introduce objections during the public hearing process. These then become the basis of the appeal. In short, the complaints about the consequence are to some degree disingenuous, as they are commenting on their own tactics.

6. Keeping in mind my response to the previous question, my initial impressions are that there are some major activities that are not adequately funded. Whether this is due to funding shortages, or inappropriate staff distribution and workloads is unclear at this time. Concerns in this regard have been regularly reported in the Executive Officer's Monthly Report.

 I have suggested to the Board, that since we have just appointed a new Executive Officer, one of their first tasks be a management evaluation of the Region, to include a task review and prioritization, a workload distribution analysis, and a resource availability and needs analysis. This is intended to allow us to understand what the shortcomings are.

 But clearly the needs, or at least the expectations, of our stakeholders, in certain areas, are not being met in a timely manner. The result of this failure is now being seen in the complaints from the stakeholders.

Water Quality Permitting

7. No, I do not believe that relying on a voluntary system of "best management practices" will protect the state's waters from polluted storm water. However, we do not depend on a voluntary system of compliance in our water quality permitting, although we do use the "best management practices" in some instances, to deal with the sources.

 If the efficacy of voluntary systems to protect the "public trust" were proven, we would be writing ourselves tickets when we exceeded the posted speed limit, or when we operated a motor vehicle under the influence of alcohol or drugs.

 While there are some notable examples of individual and corporate "voluntary compliance," it is unfortunately true that where our personal interests are on the line, we can find ways to rationalize almost any excuse for overlooking one, many, or the total non-compliance, with what we ought to be doing. This is most evident in those instances where doing so provides a competitive advantage (or economic advantage).

That is why clear, specific standards, and monitoring of compliance (enforcement) is an essential part of our culture.

8. Yes, I believe they would be, and in the end will provide the only enforceable tool we have. The Board Members, and eventually the courts, will have substantial difficulty dealing with technical arguments between competing experts about "best management practices." Clear numeric standards that are either met, or violated, in this case, making the arguments about what are "best management practices," moot.

 This approach is really no different than trying a "best drinking practices" approach to the enforcement of laws against operating a motor vehicle while under the influence of drugs or alcohol. In this instance, the driver (and their supporting experts) would argue that their tolerance of the substance, and experience in driving under the influence, permitted them to operate their motor vehicle safely.

Enforcement of Water Quality Laws

9. The Central Valley Regional Water Quality Control Board is in the process of adopting a resolution to this specific problem. The item was scheduled for the 16 March 2006 Regional Board meeting, and was resolved. Because of the continuing nature of the proceeding, I am hesitant to discuss this issue any further.

10. Without reference to any specific project, I believe that violations of any prohibited action are best dealt with in the shortest possible time frame, consistent with building a solid enforcement case and providing due process protections.

 The concept of permitting ongoing violations of any law (or regulation) is totally unacceptable to me. Lengthy delays amount to a "de facto" permit to pollute, since there is no enforcement action in place during the delay. This is true whether the action is deferred in a case, or whether a permit allows continued violations after a fine for previous violations. Neither approach is likely to be protective of the "public trust" responsibility for the waters of the State and the beneficial uses of those waters.

 The enforcement options range from fines, to the use compliance schedules to assist the violator to achieve compliance, to immediate cease and desist orders for the discharge if risk is high, or if other measures have been unsuccessful.

11. Regional board staff needs to be clearly directed to deal promptly with these issues, and to immediately inform the Board Executive Officer of any limitations to their ability to do so. The Board Members should be immediately notified of such problems.

Agricultural Waivers

12. The issue is currently before the Regional Board, and I am hesitant to discuss the specifics of this item. However in general, it appeared to me that the new Board Members, who were at their first or second meeting, may have been unprepared for the action, and may harbor concerns over the precedent that might be set by adopting a specific resolution.

 Again, due to the pending nature of this issue, I am reluctant to discuss the issue in any more detail.

 I chose not to support the staff recommendation, because after a careful reading of the material provided in advance of the meeting, and my understanding of the issues and precedents, I felt that the recommendation was not protective of the responsibilities and obligations, the Regional Boards' "public trust."

Water Quality Monitoring

13. Water quality monitoring is a required component of waste discharge permits. Done properly it can be used to ensure compliance with the permit terms, but equally as important, it can serve to exonerate a permit holder of accusations about violations.

 Other monitoring could include long term studies, such as the Interagency Ecological Study Program, water quality monitoring program for the Estuary, and the often routine sampling of process and drinking source water, for the purposes of ensuring that the water was safe for its intended use.

Cleanup of Polluted Waters

14. The existing schedule for the adoption of TMDL's is behind, due to the workload issues, appeals to higher authorities, and court actions.

 In one case adoption of an upstream TMDL waited until a court challenge to a downstream action was resolved in court. Despite this, considerable progress has been made, and the Central Valley RWQCB has diligently pursued the task with the available resources. Inserted below is the current status report for the Central Valley RWQCB:

TMDL Schedule and Completion Dates
(10 March 2006)
(Bold Italics indicate Adopted and Implemented)

FY 2000
- ***Grasslands Selenium*** – Promised April 2000 – Submitted June 2000
- ***Salt Slough Selenium*** – Promised April 2000 – Submitted June 2000

FY 2001
- ***San Joaquin River Selenium*** – June 2001

FY 2002
- ***Upper Sacramento River Copper, Zinc, Cadmium*** – Projected date June 2001 – Adopted April 2002
- ***Clear Lake Mercury*** – December 2002

FY 2003
- ***Sacramento and Feather River Diazinon*** - Projected date June 2003 – Adopted October 2003
- ***Sacramento County Urban Creeks (including Diazinon and Chlorpyrifos)*** – Projected date December 2003 - Approved June 2004

FY 2004
- ***San Joaquin River Salinity and Boron (Vernalis)*** – Projected date June 2003 – Adopted September 2004 – delays due to need for extended public outreach
- ***San Joaquin River Dissolved Oxygen*** – Projected date January 2005 – Adopted January 2005

FY 2005
- ***Cache Creek Mercury (Harley Gulch, Bear Creek)*** – Projected date January 2005 – Adopted October 2005 – required additional stakeholder involvement
- Delta and other water bodies organochlorine pesticides – Projected date June 2006
- ***San Joaquin River Diazinon and Chlorpyrifos*** – Projected date June 2003 – Adopted October 2005 – delays due to staff changes and Sacramento/Feather River lawsuit on diazinon objectives
- Clear Lake Nutrients – Projected date June 2006 – Scheduled for June 2006

FY 2006
- American River Mercury – Projected date January 2007
- Delta Mercury – Projected date January 2005 – Scheduled for June 2006 but will be delayed – delays due to need for extended discussions on how to address concerns with wetland discharges and coordination with Region 2 mercury TMDL

- San Joaquin River upstream from Stanislaus Salinity and Boron – Projected date June 2006 – delayed to December 2006 because of delays in approval by State Board of downstream salinity TMDL
- Delta Diazinon and Chlorpyrifos – Projected date June 2004 – Scheduled for September 2006 – dependent on completing San Joaquin River diazinon and chlorpyrifos TMDL

FY 2007 and beyond
- South Delta Channels Dissolved Oxygen –
- Sacramento and San Joaquin Basin Pesticides –
- Stockton Area Sloughs and Rivers –

Despite this schedule, there are about 150 impaired water bodies identified in the Central Valley Regional Boards' jurisdiction, and literally thousands of potential pollutants for which we have inadequate monitoring information, and even less information for the formulation of TMDL's, or for establishing that they are not a problem.

Beyond this basic knowledge problem, until we understand the scope of the issues before us, we cannot build an effective solution, with a plan of implementation.

15. The task of identifying pollution loading sources can be performed by staff of any number of agencies, so long as the information is gathered in a properly designed monitoring plan, and meets basic guidelines for accuracy and reporting.

The task of identifying solutions to the problems begins with some detective work, tracing the pollutants back to their sources. Do they come from a "point source," or a "non-point source," or are they part of the natural background water quality. Once we have identified a source, we must then look at technologies available to resolve the specific problem, and finally, we must find a way to fund the implementation of the solution.

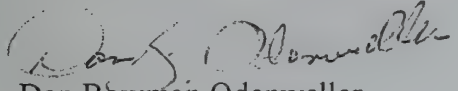
This latter task can be accomplished by a variety of means, including waste discharge permits. The process is outlined in the federal Clean Water Act (including Section 319), and in the States' Porter-Cologne Act (including Section 13369).

Generally, we are to identify waters where beneficial uses are being impaired by the discharge of pollutants. We are then to list these waters, develop TMDL's based on monitoring information, and finally, regulate the problem so as to return the water body to a condition which permits it to support the beneficial uses of the waterway.

Currently, there appears to be a lack of adequate resources within the Central Valley Regional Water Quality Control Board to provide for the expeditious cleanup of the State's waters under our jurisdiction.

Thank you again for the opportunity to respond to your questions. Please do not hesitate to contact me if I can be of any further assistance.

Respectfully,



Dan Bowman Odenweller

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